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# Contents

**Federal Register**

Vol. 82, No. 106

Monday, June 5, 2017

**Separate Parts In This Issue**

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

## CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

**Proclamations:**

9618.....25921
9619.....25923
9620.....25925
9621.....25927
9622.....25929

**5 CFR**

1201.....25715

**12 CFR**

1263.....25716

**14 CFR**

39.....25723

**Proposed Rules:**

39 (4 documents) .....25742, 25744, 25746, 25748

**23 CFR**

490.....25726

**28 CFR**

**Proposed Rules:**

16.....25751

**33 CFR**

117 (3 documents) .....25726, 25727
165 (2 documents) .....25728

**40 CFR**

60.....25730
62.....25734

**Proposed Rules:**

62.....25753

**44 CFR**

64.....25739

**49 CFR**

7.....25740

**Proposed Rules:**

387.....25753

# Rules and Regulations

Federal Register
Vol. 82, No. 106
Monday, June 5, 2017



## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** This final rule adjusts the level of civil monetary penalties (CMPs) in regulations maintained and enforced by the Merit Systems Protection Board (MSPB) with both an initial ''catch-up'' and annual adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) and Office of Management and Budget (OMB) guidance.

**DATES:** *Effective Date:* June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Everling, Acting Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; Phone: (202) 653–7200; Fax: (202) 653–7130; or email: *mspb@mspb.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the 1990 Act), Public Law 101–410, provided for the regular evaluation of CMPs by Federal agencies. Periodic inflationary adjustments of CMPs ensure that the consequences of statutory violations adequately reflect the gravity of such offenses and that CMPs are properly accounted for and collected by the Federal government. In April 1996, the 1990 Act was amended by the Debt Collection Improvement Act of 1996 (the 1996 Act), Public Law 104–134, which required Federal agencies to adjust their CMPs at least once every four years. However, because inflationary adjustments to CMPs were statutorily capped at ten percent of the maximum penalty amount, but only required to be calculated every four years, CMPs in many cases did not correspond with the true measure of inflation over the preceding four-year period, leading to a decline in the real value of the penalty. To remedy this decline, the 2015 Act (section 701 of Pub. L. 114–74) requires agencies to adjust CMP amounts with an initial ''catch-up'' adjustment and make subsequent annual inflationary adjustments through a rulemaking using a methodology mandated by the legislation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties.

A civil monetary penalty is ''any penalty, fine, or other sanction'' that: (1) ''is for a specific amount'' or ''has a maximum amount'' under Federal law; and (2) that a Federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action in the Federal courts.''

The MSPB is authorized to assess CMPs pursuant to 5 U.S.C. 1215(a)(3) and 5 U.S.C. 7326 in disciplinary actions brought by the Special Counsel. The corresponding MSPB regulation for both CMPs is 5 CFR 1201.126(a). As required by the 2015 Act, and pursuant to guidance issued by the OMB, the MSPB is now making a one-time catch-up adjustment to the CMPs within its jurisdiction, as well as an annual adjustment for 2017, according to the prescribed formulas.

## II. Calculation of Adjustment

### *A. Initial Catch-Up Adjustment*

Shortly after enactment of the 2015 Act, OMB issued guidance on calculating the catch-up adjustment. *See* Memorandum from Shaun Donovan, Dir., OMB, to Heads of Executive Departments and Agencies re: Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06 (Feb. 24, 2016). Pursuant to this guidance, the MSPB has identified applicable civil monetary penalties and calculated the catch-up adjustment. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment of the CMP (or in the year of its establishment, if no adjustment has been made) and the October 2015 CPI–U.

Nevertheless, the 2015 Act specifies that the catch-up adjustment amount will in no case exceed 150% of the penalty amount which was in force at the enactment date of the 2015 Act. Therefore, the total catch-up penalty amount will not exceed 250% of the total maximum penalty amount on November 2, 2015.

The CMP listed in 5 U.S.C. 1215(a)(3) was established in 1978 with the enactment of the Civil Service Reform Act of 1978 (CSRA), Public Law 95–454, section 202(a), 92 Stat. 1121–30 (Oct. 13, 1978), and originally codified at 5 U.S.C. 1207(b). That CMP was last amended by section 106 of the Whistleblower Protection Enhancement Act of 2012, Public Law 112–199, 12 Stat. 1468 (Nov. 27, 2012), now codified at 5 U.S.C. 1215(a)(3), which provided for a CMP ''not to exceed $1,000''. Thus, the 2012 amendment of the CSRA serves as the base figure for the inflation calculation. Between October 2012 and October 2015, the CPI–U has increased by 102.819 percent. The post-catch-up adjustment penalty amount is obtained by multiplying the pre-adjustment penalty amount by the percent change in the CPI–U over the relevant time period, and rounding to the nearest dollar. Therefore, the maximum post-catch-up adjustment penalty under the CSRA is $1,000 × 1.02819 = $1,028.19, which rounds to $1,028. The post-catch-up adjustment penalty is less than 250 percent of the pre-adjustment penalty, so the limitation on the amount of the adjustment under section 4(b) of the 2015 Act is not implicated.

The CMP authorized in 5 U.S.C. 7326 was established in 2012 by section 4 of the Hatch Act Modernization Act of 2012 (Hatch Act), Public Law 112–230, 126 Stat. 1617 (Dec. 28, 2012), which provided for a CMP ''not to exceed $1,000.'' Thus, the maximum post-catch-up adjustment penalty under the Hatch Act is $1,028.

### *B. 2017 Annual Adjustment*

OMB also issued guidance on calculating the annual inflationary adjustment for 2017. *See* Memorandum from Shaun Donovan, Dir., OMB, to Heads of Executive Departments and Agencies re: Implementation of the 2017 Annual Adjustment Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015, M–17–11 (Dec. 16, 2016). Therein, OMB notified agencies that the annual adjustment multiplier for 2017, based on the CPI–U, is 1.01636 and that the 2017 annual adjustment amount is obtained by multiplying the catch-up adjustment penalty amount by the 2017 annual adjustment multiplier, and rounding to the nearest dollar. Therefore, the new maximum penalty under the CSRA and the Hatch Act is $1,028 × 1.01636 = $1,044.81, which rounds to $1,045.

**III. Effective Date of Penalties**

The revised CMP amounts will go into effect on June 5, 2017. All violations for which CMPs are assessed after the effective date of this rule will be assessed at the adjusted penalty level regardless of whether the violation occurred before the effective date.

**IV. Procedural Requirements**

*A. Administrative Procedures Act*

Pursuant to 5 U.S.C. 553(b), the MSPB has determined that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because Congress has specifically exempted agencies from these requirements when implementing the 2015 Act. The 2015 Act requires agencies to adjust CMPs with an initial catch-up adjustment through an interim final rule, which does not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The 2015 Act also explicitly requires the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553, the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment. It is also in the public interest that the adjusted rates for CMPs under the CSRA and the Hatch Act become effective as soon as possible to maintain their effective deterrent effect.

*B. Regulatory Impact Analysis: Executive Order 12866*

The MSPB has determined that this is not a significant regulatory action under Executive Order 12866. Therefore, no regulatory impact analysis is required.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). As discussed above, the 2015 Act does not require agencies to first publish a proposed rule when adjusting CMPs within their jurisdiction.

Thus, the RFA does not apply to this final rule.

*D. Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

*E. Unfunded Mandate Reform Act of 1995*

This rule does not involve a Federal mandate that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532).

*F. Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights*

This rule does not have takings implications.

*G. Executive Order 13132, Federalism*

This rule does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*H. Executive Order 12988, Civil Justice Reform*

The MSPB has reviewed this rule in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, the MSPB has evaluated this rule and determined that it has no tribal implications.

*J. Paperwork Reduction Act*

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

**List of Subjects in 5 CFR Part 1201**

Administrative practice and procedure, Civil rights, Government employees.

For the reasons set forth above, 5 CFR part 1201 is amended as follows:

## PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

**§ 1201.126 [Amended]**

■ 2. Section 1201.126 is amended in paragraph (a) by removing ''$1,000'' and adding in its place ''$1,045'' and removing ''5 U.S.C. 1215(a)(3)'' and in its place adding ''5 U.S.C. 1215(a)(3), 7326; 28 U.S.C. 2461 note''.

**Jennifer Everling,**

*Acting Clerk of the Board.*

[FR Doc. 2017–11541 Filed 6–2–17; 8:45 am]

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## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1263

**RIN 2590–AA85**

### Federal Home Loan Bank Membership for Non-Federally-Insured Credit Unions

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Final rule.

**SUMMARY:** The Federal Housing Finance Agency (FHFA or Agency) is adopting a final rule revising its regulation governing Federal Home Loan Bank (Bank) membership to implement section 82001 of the Fixing America's Surface Transportation Act (FAST Act), which amended the Federal Home Loan Bank Act (Bank Act) to authorize certain credit unions without Federal share insurance to become Bank members.

The rule also makes appropriate conforming changes to FHFA's regulation on Bank membership. The final rule is substantially the same as the proposed rule, but includes one revision intended to streamline the application process for credit unions applying for Bank membership pursuant to the FAST Act provision.

**DATES:** *Effective Date:* July 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Eric M. Raudenbush, Associate General Counsel, Office of General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084; or Julie A. Paller, Senior Financial Analyst, Division of Bank Regulation, *Julie.Paller@fhfa.gov,* (202) 649–3201 (not toll-free numbers), Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under the Bank Act, federally insured depository institutions, including state- and federally chartered credit unions whose member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF), have been eligible for Bank membership since 1989. Until recently, however, state-chartered credit unions without Federal share insurance were ineligible for Bank membership, except to the limited extent that a credit union certified as a ''community development financial institution'' (CDFI) by the CDFI Fund of the United States Department of the Treasury could meet the eligibility requirements applicable to CDFIs.[1]

In December 2015, Congress amended the Bank Act to authorize the Banks to approve applications for membership from state-chartered credit unions without Federal share insurance (irrespective of their CDFI status) where specified requirements have been met.[2] Specifically, new section 4(a)(5) of the Bank Act provides that a credit union lacking Federal share insurance that has applied to become a member of a Bank shall be treated as a federally insured depository institution for purposes of determining its eligibility for Bank membership, so long as the applicant's state credit union regulator has determined that it met all of the requirements for Federal share insurance as of the date of its application for membership.[3] The new statutory provision also provides, however, that if the applicant's state regulator has not made a determination as to whether it met the requirements for Federal share insurance within six months of the date of its application for Bank membership, then the applicant shall be deemed to have met those requirements.[4] Section 4(a)(5) also provides that, notwithstanding any State law to the contrary, the right of Banks to repayment of advances made to credit unions admitted to membership pursuant to that provision and Banks' interests in collateral securing such advances are to have protections and priorities similar to those that apply to advances made to, and collateral pledged by, members that are federally insured depository institutions.[5]

### *B. The Proposed Rule*

On September 28, 2016, FHFA published in the **Federal Register** a Notice of Proposed Rulemaking (proposed rule) to amend FHFA's regulation on Bank membership, located at 12 CFR part 1263, to implement section 4(a)(5) of the Bank Act.[6] The proposed rule, which referred to state-chartered credit unions falling within the scope of the new statutory provision as ''non-federally-insured credit unions'' (NFICUs), proposed to add a new regulatory section governing the Banks' acceptance and processing of membership applications from NFICUs, as well as the treatment of existing credit union Bank members that choose to become NFICUs by canceling their federal share insurance. As proposed, the rule would have codified the core concepts of a set of April 2016 guidance letters in which FHFA advised each Bank on the handling of NFICU membership applications under section 4(a)(5). The proposed rule also would have provided additional clarification on certain points. The details of the proposed rule are discussed in the section-by-section analysis of the final rule below.

The 60-day comment period for the proposed rule ended on November 28, 2016. FHFA received eight comment letters from seven separate commenters, which included one Bank, one provider of private credit union share insurance, and five credit union trade associations.[7] Six of the commenters expressed general support for the proposed rule and none of the commenters expressed general opposition to the rule. Each commenter, however, requested one or more specific revisions to the regulatory text. FHFA carefully considered all of the comments and ultimately decided to adopt one of the suggested revisions. The comments on specific aspects of the proposed rule, and FHFA's responses, are discussed in the section-by-section analysis below.

Three commenters raised an issue regarding the treatment of NFICU members by the Banks that was not addressed in the proposed rule, which focused exclusively on membership requirements for NFICUs. Those commenters expressed concerns that Banks currently may be imposing on NFICUs advances collateral requirements that are more stringent than those for federally insured depository institution members—for example, by requiring that NFICU members deliver collateral to the Bank or by imposing higher discounts on collateral after an existing member terminates its federal insurance—and asked that the final rule prohibit such practices.

FHFA declines to amend its regulations to address those practices, in part because the request goes beyond the scope of the proposed rule and thus cannot be addressed in the final rule. Moreover, while FHFA's collateral regulations implement statutory requirements and establish minimum standards necessary to ensure the safety and soundness of the Banks, those regulations otherwise permit each Bank to make its own decisions regarding the terms on which it will lend to its members, including the amounts and types of collateral it will accept from particular members, the discounts on such collateral, and whether a member must deliver collateral to the Bank. This long-standing regulatory approach recognizes that the Banks are in the best position to assess the credit risks posed by particular members or by particular types of members within their

[1] In 2008, Congress amended the Bank Act to authorize entities certified as CDFIs by the CFDI Fund of the United States Department of the Treasury to become Bank members, provided the CDFI meets the membership eligibility requirements established for such entities. *See* Housing and Economic Recovery Act of 2008, Public Law 110–289, section 1206, 122 Stat. 2787 (2008), codified at 12 U.S.C. 1424(a)(1). By law, credit unions—including state-chartered credit unions without Federal share insurance—may be certified as CDFIs. *See* 12 U.S.C. 4701–4719; 12 CFR part 1805.

[2] *See* Fixing America's Surface Transportation Act, Public Law 114–94, section 82001(a), 129 Stat. 1795 (2015), *codified at* 12 U.S.C. 1424(a)(5).

[3] *See* 12 U.S.C. 1424(a)(5)(A), (B)(i). Although the statutory text actually refers several times to ''Federal deposit insurance,'' FHFA construes those references to mean the Federal share insurance that is provided to credit unions by the NCUSIF, in light of the evident purpose for which Congress adopted the NFICU amendments.

[4] *See* 12 U.S.C. 1424(a)(5)(B)(ii).

[5] *See* 12 U.S.C. 1424(a)(5)(C), (D).

[6] *See* 81 FR 66545 (Sept. 28, 2016).

[7] The comment letters may be viewed at *https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Comment-List.aspx?RuleID=566.*

respective districts. In recent years, as more insurance companies have become members and CDFIs have become eligible for membership, FHFA has issued guidance recognizing that Banks may establish different collateral requirements for non-federally insured entities to address the risks posed by the lack of a federal receivership process for such institutions.[8]

Notwithstanding that section 4(a)(5) of the Bank Act provides that the Banks' security interests in NFICU collateral are to have some of the same protections and priorities that apply to interests in collateral pledged by federally insured depository institutions, a Bank might reasonably conclude that there remain additional risks inherent in lending to NFICUs, arising principally from the fact that the Banks have had no experience with the liquidation of a non-federally insured credit union. While the laws governing liquidation of federally insured credit unions are well known to the Banks and are uniform across the country, the Banks are less familiar with the laws governing the insolvency and liquidation of NFICUs, which will vary from state to state. Although the Banks have significant numbers of state-chartered credit union members, any that have failed to date would have been federally insured and, therefore, would have been liquidated by the National Credit Union Association (NCUA). If a Bank concludes that the characteristics of NFICUs give rise to incrementally greater risk that it should address through more stringent collateral requirements, then FHFA would not prevent it from imposing those requirements.

## II. The Final Rule

An analysis of the primary revisions made by the final rule to FHFA's membership regulation appears below, followed by a discussion of the conforming revisions. Except as discussed below with respect to the timing of communications between an NFICU and its state credit union regulator during the membership application process, this final rule adopts without substantive change all of the regulatory additions and revisions set forth in the proposed rule. As described in more detail below, the final rule also makes a number of conforming revisions to other sections of the membership regulation, each of which appeared in identical form in the proposed rule.

### *A. Primary Revisions*

The principal regulatory provisions regarding NFICUs include a new § 1263.19, setting forth the prerequisites that must be met in order for an NFICU to be treated as an insured depository institution for Bank membership purposes, as well as two substantive definitions located in § 1263.1.

#### 1. Definitions of NFICU and Insured Depository Institution—§ 1263.1

The final rule adds to § 1263.1 a definition of ''non-federally-insured credit union,'' defining the term to mean a ''State-chartered credit union that does not have Federal share insurance and that has not been certified as a CDFI by the CDFI Fund.'' In conjunction with this, the rule also revises the definition of ''insured depository institution'' to include, in addition to federally insured depository institutions, NFICUs meeting the prerequisites of § 1263.19. As an ''insured depository institution'' under the revised regulation, a qualifying NFICU applying for Bank membership is subject to all of the eligibility requirements and other provisions of the membership regulation that apply to insured depository institutions generally, except where otherwise provided. Thus, a qualifying NFICU applicant is eligible for membership only if: It is duly organized under Federal or state law; it is subject to inspection and regulation under Federal or state banking laws, or similar laws; it makes long-term home mortgage loans; its financial condition is such that advances may be safely made to it (hereinafter the ''financial condition'' requirement); its management and its home financing policy are both consistent with sound and economical home financing; and it has at least 10 percent of its assets in ''residential mortgage loans.'' [9] With the exception of the financial condition requirement, an NFICU applicant must demonstrate compliance with each of those membership eligibility requirements in the same manner that is required of insured depository institutions generally. As discussed below, the final rule requires an NFICU applicant to demonstrate compliance with the financial condition requirement in the same manner as a CDFI credit union.

#### 2. Prerequisites for an NFICU to be Treated as an Insured Depository Institution—§ 1263.19

As proposed, the final rule adds to the membership regulation a new § 1263.19 (a reserved section under the existing regulation), which sets forth the prerequisites that an NFICU must meet in order to be treated as an insured depository institution for purposes of determining its eligibility for Bank membership. Paragraph (a) of new § 1263.19 addresses the treatment of NFICUs that apply for Bank membership, while paragraph (b) addresses the status of any credit union that is already a Bank member at the time it opts to become an NFICU by canceling its Federal share insurance.

##### a. Treatment of an NFICU Applying for Bank Membership—§ 1263.19(a)

In parallel with the inclusion of qualifying NFICUs within the regulatory definition of ''insured depository institution,'' new § 1263.19(a) provides that an NFICU applicant shall be treated as an insured depository institution for purposes of determining its eligibility for membership, provided that it complies with all of the requirements of § 1263.19(a)(1) through (3).

As proposed, these provisions would have required that a Bank first obtain from an NFICU applicant all of the information that the Bank generally requires to process membership applications from federally insured depository institutions, including all of the information needed to demonstrate compliance with the general eligibility requirements for Bank membership. Once in receipt of all of those materials, the Bank would have been required to notify the NFICU that its application is ''provisionally complete'' and that, before the Bank may act on the application, the NFICU must: (1) Request from its state regulator a determination that the institution met all eligibility requirements for Federal share insurance, as of the date of the request; and (2) subsequently, provide

[8] *See* FHFA AB 2013–09 (Dec. 23, 2013) (providing guidance on credit risk management practices to ensure Bank advances remain fully secured when lending to insurance company members), available online at *https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB-2013-09-COLLATERALIZATION-OF-ADVANCES-AND-OTHER-CREDIT-PRODUCTS-TO-INSURANCE-COMPANY-MEMBERS.aspx;* FHFA AB 2013–10 (Dec. 23, 2013) (outlining the criteria that FHFA examiners use in determining whether a Bank's advances are, as required by regulation, ''fully secured'' pursuant to a written security agreement that gives the Bank a ''perfectible'' security interest), available online at *https://www.fhfa.gov/SupervisionRegulation/AdvisoryBulletins/Pages/AB-2013-10-COLLATERALIZATION-OF-ADVANCES-AND-OTHER-CREDIT-PRODUCTS;-PERFECTION-AND-CONTROL-OF-COLLATERAL.aspx.*

[9] *See* 12 CFR 1263.6(a), (b). The Bank Act exempts certain smaller depository institutions—''community financial institutions'' (CFIs)—from the ''10 percent'' requirement, but defines CFI to include only institutions the deposits of which are insured under the Federal Deposit Insurance Act (FDIA) that have total assets below a certain threshold amount. *See* 12 U.S.C. 1422(10)(A)(i), 1424(a)(4). Because a credit union cannot obtain deposit insurance under the FDIA, it cannot qualify as a CFI regardless of its level of total assets.

to the Bank acceptable documentation of the regulator's response or lack of response to its request. The proposed rule would also have expressly required the NFICU applicant to submit such a request, in writing, to its state regulator and simultaneously provide a copy of the request to the Bank. The rule would have permitted a Bank to deem an NFICU's application fully complete, and to act on the application as provided in § 1263.3(c),[10] after having received from the applicant any one of the following items: (1) A written statement from the state regulator confirming that the NFICU satisfied all of the eligibility requirements for Federal share insurance as of the date of the request; (2) a written statement from the state regulator that it is unable or unwilling to make a determination as to the NFICU's eligibility for Federal share insurance; or (3) a written statement from the NFICU certifying that it did not receive a response from its state regulator within the six-month waiting period provided for in the statute.

FHFA received comments on both the required timing of an NFICU's request for a determination from its state regulator and the type of documentation of that determination a Bank must receive to deem an NFICU's application complete under proposed § 1263.19(a). On the timing issue, several commenters requested that the final rule permit an NFICU applicant to request the determination from its state regulator at any time after initiating the membership application process, instead of waiting until the Bank has deemed the application provisionally complete, as would have been required under the proposed rule. Those commenters expressed a belief that most NFICUs would be inclined to request the determination early in the application process to enable the Bank to make a decision on the membership application at the earliest possible time.

With regard to timing requirements for the NFICU application process, the Bank Act uses the undefined term ''date of the application'' in establishing both the point in time as of which the state regulator must determine the NFICU's eligibility for Federal share insurance and the starting point of the six-month period during which the Bank and NFICU must await action by the state regulator. Specifically, section 4(a)(5) requires a Bank to treat an NFICU applicant as a federally insured depository institution if the NFICU's state credit union regulator either: (1) Has determined that the NFICU met all the eligibility requirements for Federal share insurance ''as of the date of the application for membership''; or (2) has failed to make a determination ''by the end of the 6-month period beginning on the date of the application.'' In its April 2016 guidance letters to the Banks, FHFA construed the statutory term ''date of the application'' to be the date as of which the NFICU had submitted a ''provisionally complete'' application—that is, an application including all information and supporting materials required for the Bank to act on it, except for the documentation regarding the state regulator's determination. Although the proposed rule did not use the term ''date of the application,'' the proposed requirement that an NFICU wait until after the Bank has deemed its application provisionally complete to submit the request to its state regulator is based on the construction of that term adopted in the guidance letters.

The proposed rule would have required the state regulator's eligibility determination to have been made as of the date of the NFICU's request and would have measured the six-month waiting period from the date of the request. Section 4(a)(5) of the Bank Act does not expressly require that either a Bank or an NFICU applicant request a determination from the NFICU's state regulator. But, in that the statute allows a state regulator six months within which to make a determination if it wishes to do so, it is most reasonably read as presuming that the regulator has in the first instance been asked to make a determination. The proposed rule's use of the date of the NFICU's request for a determination, instead of the date the Bank notified the NFICU that its application is provisionally complete, to set both the date as of which the regulator's determination should be made and the starting date of the six-month waiting period reflected this reading of the statute.

Given the ambiguity of the statute on the issue, FHFA may reasonably construe the ''date of the application'' to be a point in the application process that is earlier than the date on which the Bank deems an NFICU's application to be provisionally complete, as requested by some commenters. FHFA had two principal reasons for proposing to require that an NFICU submit a provisionally complete application prior to officially requesting a determination from its state regulator. The first was to provide some reasonable assurance that an NFICU applicant actually was committed to completing the application process prior to requiring it to submit a request to its state regulator. The second was that the concept of a ''complete'' membership application and the requirement that a Bank notify an applicant after deeming its application complete are already well established under the existing membership regulation.[11]

FHFA is persuaded, however, that allowing an NFICU to request a determination at an earlier stage in the membership application process would result in a more efficient process than would the approach of the proposed rule. Accordingly, FHFA has revised the final rule to permit an NFICU applicant to submit its official request for a determination to its state regulator at any time after it has submitted its application to the Bank to initiate the membership application process. As under the proposed rule, the six-month waiting period will start on, and the state regulator must make the Federal share insurance eligibility determination as of, the date that the applicant submits the request to its state regulator. Specifically, § 1263.19(a)(1) of the final rule requires that, after an NFICU initiates the membership application process, the Bank promptly notify the applicant in writing that its application will not be deemed complete or be acted upon by the Bank until the applicant has, in addition to satisfying all other application requirements, requested a determination from its state regulator as required under paragraph (a)(2) and subsequently provided one of the types of acceptable documentation listed in paragraph (a)(3). Section 1263.19(a)(2) and (3) of the final rule are substantively unchanged from the proposed provisions.

As does the final provision, proposed § 1263.19(a)(3) would have required a Bank to deem an NFICU's application complete after having received any one of three types of documentation regarding the response or lack of response of the applicant's state regulator to its request for a Federal share insurance eligibility determination. As noted above, one of those types of documentation is a written statement from the regulator to the NFICU applicant that the regulator is unable or unwilling to make such a determination. One commenter requested that the final rule also include a fourth option under which a Bank could deem an application fully complete if the applicant's state regulator had previously provided direct written notification to the Bank that it

[10] Existing § 1263.3(c) requires that a Bank notify an applicant when it deems the application to be complete and (with certain exceptions) either approve or deny the application within 60 calendar days of the date it made that determination. *See* 12 CFR 1263.3(c).

[11] *See* 12 CFR 1263.3(c).

would not make federal share insurance eligibility determinations for any of its NFICU regulatees. In advocating the suggested revision, the commenter reasoned that permitting a Bank to accept such a statement of general policy from a state regulator would relieve the regulator of ''unnecessary administrative burdens'' because the regulator then would not be required to address each individual NFICU request with the same response. The commenter also asserted that including such an option would streamline the application process for both the Bank and the NFICU in that, once the applicant had made the required request to its state regulator, the Bank could rely on the prior direct communication from the regulator to conclude that no individual response would be forthcoming and could act upon the application immediately.

For three principal reasons, FHFA has decided not to provide for the recommended option in the final rule. First, doing so would further complicate what is already somewhat complicated regulatory text.[12] Second, reliance on statements of general policy received directly from a state regulator leaves open the possibility that the regulator's policy regarding these Federal share insurance eligibility determinations may change over time (such as when a successor regulator assumes office) without the knowledge of the Bank. Third, reliance on such general statements would foreclose the possibility that a state regulator, despite having a general policy against making such determinations, could in appropriate circumstances choose to convey to a Bank information about a particular institution that is relevant to its eligibility for Federal share insurance or its eligibility for Bank membership. While FHFA could include caveats in the final rule to address each of those drawbacks, any benefits to doing so are apt to be modest and would result in further complicating the regulatory text. Retaining the language of the proposed rule will also ensure that, in each case, the state regulator is aware that its regulatee is applying for Bank membership and that it has an opportunity to make a determination if it wishes to do so.

In addition, FHFA does not believe that adopting this recommendation would reduce the burden on the state regulators to any meaningful degree. The only burden that the proposed rule would have imposed on the state regulator in this respect is to provide individual responses to requests received from its credit unions, which could be easily accomplished by means of a form letter.

b. Treatment of a Credit Union That Becomes an NFICU When Already a Member—§ 1263.19(b)

Mirroring the proposed rule, final § 1263.19(b) makes clear that an existing credit union Bank member that cancels its Federal share insurance may remain a member of its Bank as an NFICU without requesting a Federal share insurance eligibility determination from its state regulator, provided the Bank determines that the member has canceled its Federal share insurance voluntarily. A Bank could make this determination by obtaining a copy of the NCUA's approval of the credit union's request to terminate its Federal insurance.[13] After becoming an NFICU, the credit union would remain subject to all regulatory provisions that apply to Bank members that are insured depository institutions.

Two commenters took issue with the use of the word ''cancel'' in proposed § 1263.19(b), as well as with the use of the word ''terminate'' in the proposed rule preamble, in describing the process a federally insured credit union would undertake in becoming an NFICU. Those commenters requested that the final rule instead describe the process as ''converting'' from Federal share insurance to private share insurance.

As the commenters noted, under the regulations of the NCUA, the word ''convert'' refers to ''the act of canceling federal insurance and simultaneously obtaining insurance from another insurance carrier,'' while the word ''terminate'' refers to ''the act of canceling federal insurance and mean[s] that the credit union will become uninsured.'' [14] In advocating for the use of the word ''convert'' in referring to existing Bank members that become NFICUs, the commenters asserted that any existing member that cancels its Federal share insurance will simultaneously obtain private share insurance, rather than simply becoming uninsured. As a practical matter, that is likely to be true given that there appears to be no state that allows its credit unions to operate without either federal or private share insurance.[15]

As a legal matter, however, section 4(a)(5) of the Bank Act does not require a credit union to have private share insurance to become a Bank member through the NFICU process. The statutory provision refers to ''credit union[s] which lack[ ] Federal deposit insurance'' and does not require coverage by private, or other non-federal, share insurance as a prerequisite to qualifying for treatment as a federally insured depository institution for Bank membership purposes.[16] In recognition of this fact, the final rule defines ''non-federally-insured credit union'' in terms of ''a State-chartered credit union that does not have Federal share insurance'' and does not otherwise require an NFICU to be covered by any type of non-federal share insurance in order to be treated as a federally insured depository institution.[17]

If FHFA were to accept the commenters' suggestion and revise the rule to refer to members that have ''converted,'' the rule would then appear to impose upon existing members a private share insurance requirement that is not imposed by the statute. As indicated in the definitions quoted above, the NCUA's regulations use the undefined word ''cancel'' to refer generically to the relinquishing of federal share insurance coverage without connoting either the existence or lack of an alternative form of share insurance. Accordingly, the final rule continues to describe members that become NFICUs as those that voluntarily ''cancel'' their federal share insurance.

*B. Conforming Amendments*

In addition to the primary revisions, the final rule makes a number of conforming revisions to part 1263.

[12] Because FHFA received no information from any state regulators on this issue, it is possible, and perhaps likely, that some regulators will decline to provide such blanket statements to the Banks, rather than responding to the requests of their own regulated institutions. For that reason, the final rule would still have to include the proposed provisions requiring each NFICU to request such a determination and further requiring each Bank to await receipt of one of the three acceptable types of documentation before proceeding.

[13] A state-chartered credit union may terminate its Federal share insurance or convert to a non-federal form of insurance only with the prior written approval of the NCUA. *See* 12 CFR 708b.201(d), (e), 708b.203(d).

[14] *See* 12 CFR 708b.2.

[15] The laws of some states allow for use of a state insurance fund by their state-chartered credit unions, but there are no longer any such state funds that provide primary share insurance.

[16] Although the provision is entitled ''Certain Privately Insured Credit Unions,'' the statutory text contains no reference to privately insured credit unions and does not include coverage by private, or other non-federal, share insurance among the prerequisites that must be met.

[17] The use of the term ''non-federally-insured credit union'' in FHFA's rule differs from its use in the NCUA's regulations. FHFA's rule defines the term to mean a credit union without Federal share insurance, while NCUA regulations define the term to mean a credit union covered by a non-federal form of share insurance. *See* 12 CFR 708b.2.

1. Definitions—§ 1263.1

In addition to the substantive amendments to § 1263.1 that are discussed above, the final rule makes several amendments to that section that are intended merely to provide greater clarity, without effecting any substantive change. The final rule adds a definition for the term ''Federal share insurance'' that is identical to the definition appearing in the proposed rule and adopts verbatim the proposed revisions to the definitions of ''CDFI credit union,'' ''community development financial institution or CDFI,'' and ''regulatory financial report.''

2. Membership Application Requirements—§ 1263.2

The final rule adopts without change the two revisions to § 1263.2 of the existing regulation that appeared in the proposed rule. The final rule revises § 1263.2(b), which requires a Bank to prepare a written membership application digest for each applicant, to expressly require a Bank to include in the application digest for each NFICU applicant a summary of the manner in which the applicant has complied with the requirements of § 1263.19(a). The final rule also revises § 1263.2(c), which requires a Bank to maintain a membership file for each applicant, to make clear that a Bank should include in the file for an NFICU applicant any documents required under § 1263.19.

3. Compliance With the Financial Condition Requirement—§ 1263.11

Existing § 1263.11 governs the manner in which Banks are to determine whether depository institution applicants, including insured depository institutions and CDFI credit unions, are in compliance with the statutory ''financial condition'' eligibility requirement. As proposed, the final rule revises § 1263.11 to require a Bank to assess an NFICU applicant's compliance with the ''financial condition'' membership eligibility requirement in the same manner as is required for CDFI credit unions.

The existing provision allows a Bank to deem a depository institution applicant in compliance with the financial condition requirement if: (1) The applicant has received a composite examination rating within the past two years; (2) it meets its regulatory capital requirements; and (3) its most recent composite examination rating was ''1,'' or the most recent rating was ''2'' or ''3'' and the applicant satisfies certain ''performance trend criteria'' pertaining to its earnings, nonperforming assets, and allowance for loan and lease losses.[18] Although the regulation generally exempts federally insured depository institutions with a ''1'' exam rating from compliance with the performance trend criteria, FHFA did not extend that exemption to ''1'' rated CDFI credit unions (which, like NFICUs, are state-chartered credit unions without federal share insurance) in 2010, when it amended the regulation to accommodate CDFIs as members.

As the final rule does, the proposed rule would have revised § 1263.11 to treat NFICUs in the same way as CDFI credit unions by requiring all NFICU applicants, including those that had received a composite examination rating of ''1'' from their state regulators, also to satisfy the performance trend criteria. The rationale behind this approach is that both CDFI credit unions and NFICUs are state-chartered credit unions without federal share insurance, which warrants treating them in the same way for purposes of assessing their financial condition. Six commenters requested that the final rule treat NFICU applicants in the same manner as federally insured credit unions by exempting NFICUs with an examination rating of ''1'' from complying with the performance trend criteria. FHFA has declined to make that change.

When FHFA amended the membership regulation to accommodate CDFIs as members, it described its decision to require even ''1'' rated CDFI credit unions to satisfy the performance trend criteria as a prudential measure.[19] The Agency noted that, because such institutions are not subject to oversight by the NCUA and because they had not previously been eligible for membership, the Banks were likely to be less familiar with the state examination processes and ratings systems to which they are subject than with those that apply to federally insured depository institutions. To the best of the Agency's knowledge, no CDFI credit union has been admitted to Bank membership to date.[20] Accordingly, the prudential concerns arising from the Banks' relative lack of familiarity with the regulatory regimes that apply to credit unions that are supervised only at the state level and that would be liquidated by a private insurance company continue to exist and logically should apply with equal validity to both CDFI credit unions and NFICUs.

Given the Banks' scant experience with state-chartered credit unions that do not have federal share insurance, it remains prudent to require all such applicants—that is, both CDFI credit unions and NFICUs—to meet the performance trend criteria as part of satisfying the ''financial condition'' eligibility requirement. Moreover, assessing compliance with the performance trend criteria is a relatively straightforward exercise, requiring only that a Bank confirm that an applicant has positive net income and that its nonperforming assets and its allowance for loan and lease losses meet certain specified ratios. As the Banks gain more experience with admitting these types of members, FHFA could reconsider this requirement.

4. Reports and Examinations—§ 1263.31

Existing § 1263.31 sets forth a number of stipulations to which each Bank member is deemed to have agreed as a condition precedent to becoming a Bank member. The final rule adopts without change the revisions to paragraphs (b) and (e) of that section that appeared in the proposed rule. Existing § 1263.31(b) deems each Bank member to have agreed that the appropriate local, state, or Federal agencies or institutions may furnish the member's reports of examination to the Bank or to FHFA upon request. The final rule revises that provision to stipulate that each member that is an NFICU or a CDFI credit union is also deemed to have agreed that a private entity providing the member with share insurance may furnish such reports. Existing § 1263.31(e) deems each Bank member to have agreed to provide the Bank, within 20 days of filing, with copies of reports of condition and operations filed with its appropriate Federal banking agency. The final rule revises that provision to stipulate that each member is also deemed to have agreed to furnish copies of any reports of condition and operations it may be required to file with its appropriate state regulator and that each NFICU or CDFI credit union member is deemed to have agreed to provide copies of any such reports required to be filed with a private entity providing it with share insurance.

## III. Consideration of Differences Between the Banks and the Enterprises

Section 1313(f) of the Safety and Soundness Act requires the Director of FHFA, when promulgating regulations

[18] 12 CFR 1261.11(b)(3).

[19] *See* 75 FR 678, 684–85 (Jan. 5, 2010)

[20] The Bank membership regulation effectively treats federally insured credit unions certified as CDFIs as insured depository institutions for Bank membership purposes, while subjecting a ''CDFI credit union'' (defined to refer only to a CDFI that is a state-chartered credit union without Federal share insurance) to the same standards that apply to non-depository CDFIs, with the exception of those that must be met in order for an applicant to be deemed in compliance with the financial condition eligibility requirement.

relating to the Banks, to consider the differences between the Banks and the Enterprises (Fannie Mae and Freddie Mac) as they relate to: The Banks' cooperative ownership structure; the mission of providing liquidity to members; the affordable housing and community development mission; their capital structure; and their joint and several liability on consolidated obligations.[21] The Director also may consider any other differences that are deemed appropriate. In preparing this final rule, the Director considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

## IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) requires that FHFA consider the impact of paperwork and other information collection burdens imposed on the public.[22] Under the PRA and the implementing regulations of the Office of Management and Budget (OMB), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid control number assigned by OMB.[23] FHFA's regulation ''Members of the Federal Home Loan Banks,'' located at 12 CFR part 1263, contains several collections of information that OMB has approved under control number 2590–0003, which expires on March 31, 2020. The final rule does not make any revisions that affect the burden estimates for those collections of information. Therefore, FHFA has not submitted any materials to OMB for review.

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act[24] (RFA) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities.[25] FHFA has considered the impact of the final rule under the RFA. The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation applies only to the Banks, which are not small entities for purposes of the RFA.

### List of Subjects in 12 CFR Part 1263

Federal home loan banks, Reporting and recordkeeping requirements.

### Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, and under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA amends part 1263 of subchapter D of chapter XII of title 12 of the Code of Federal Regulations as follows:

## PART 1263—MEMBERS OF THE BANKS

■ 1. The authority citation for part 1263 continues to read as follows:

**Authority:** 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

■ 2. Amend § 1263.1 as follows:
■ a. Revise the definitions of ''CDFI credit union'' and ''Community development financial institution or CDFI'';
■ b. Add, in alphabetical order, a definition for ''Federal share insurance'';
■ c. Revise the definition of ''Insured depository institution'';
■ d. Add, in alphabetical order, a definition for ''Non-federally-insured credit union''; and
■ e. Revise the definition of ''Regulatory financial report''.

The revisions and additions read as follows:

### § 1263.1 Definitions.

* * * * *

*CDFI credit union* means a State-chartered credit union that does not have Federal share insurance and that has been certified as a CDFI by the CDFI Fund.

* * * * *

*Community development financial institution* or *CDFI* means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), a holding company for such a bank or savings association, or a credit union that has Federal share insurance.

* * * * *

*Federal share insurance* means insurance coverage of credit union member accounts provided by the National Credit Union Share Insurance Fund under subchapter II of the Federal Credit Union Act (12 U.S.C. 1781 *et seq.*).

* * * * *

*Insured depository institution* means:

(1) An insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)); and

(2) To the extent provided under § 1263.19, a non-federally-insured credit union.

* * * * *

*Non-federally-insured credit union* means a State-chartered credit union that does not have Federal share insurance and that has not been certified as a CDFI by the CDFI Fund.

* * * * *

*Regulatory financial report* means a financial report that an institution is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks and savings associations, quarterly or semi-annual call report for credit unions, NAIC's annual or quarterly statement for insurance companies, or other similar report, including such report maintained by the appropriate regulator in an electronic database.

* * * * *

### § 1263.2 [Amended]

■ 3. Amend § 1263.2:
■ a. By removing ''to 1263.18'' wherever it appears and, in its place, adding ''through 1263.19''; and
■ b. In paragraph (b), by adding at the end of the paragraph the sentence ''In preparing a digest for a non-federally-insured credit union applicant, the Bank shall summarize the manner in which the applicant has complied with the requirements of § 1263.19(a).''

### § 1263.3 [Amended]

■ 4. Amend § 1263.3, in paragraph (c), by removing from the second sentence the words ''a Bank'' and adding in their place the words ''the Bank''.

### § 1263.11 [Amended]

■ 5. Amend § 1263.11, in paragraph (b)(3)(iii), by removing the words ''A CDFI credit union applicant'' and adding in their place the words ''An applicant that is a CDFI credit union or a non-federally-insured credit union''.

### § 1263.19 [Transferred to Subpart C]

■ 6. Transfer reserved § 1263.19 to subpart C.

[21] 12 U.S.C. 4513(f).
[22] *See* 44 U.S.C. 3507(a) and (d).
[23] *See* 44 U.S.C. 3512(a); 5 CFR 1320.8(b)(3)(vi).
[24] 5 U.S.C. 601, *et seq.*
[25] *See* 5 U.S.C. 605(b).

## Subpart C—Eligibility Requirements

■ 7. Add § 1263.19 to read as follows:

### § 1263.19 Non-federally-insured credit unions.

(a) *Applicants.* Except where otherwise provided, a non-federally-insured credit union applying to become a member of a Bank shall be treated as an insured depository institution for purposes of determining its eligibility for membership under this part, provided that all of the following requirements have been met:

(1) *Notice.* Upon receiving from a non-federally-insured credit union an application for membership, a Bank shall promptly notify the applicant in writing that its application will not be deemed complete or be acted upon by the Bank until the applicant has, in addition to satisfying all other generally applicable requirements, complied with paragraph (a)(2) of this section and subsequently provided one of the items listed in paragraph (a)(3) of this section.

(2) *Request to regulator.* After receiving the notice required under paragraph (a)(1) of this section, a non-federally-insured credit union applicant shall send to its appropriate State regulator a written request for a determination that the applicant met all of the eligibility requirements for Federal share insurance as of the date of the request. The applicant shall provide to the Bank a copy of that request simultaneously with its transmittal to the regulator.

(3) *Completion of application.* A Bank may deem the application of a non-federally-insured credit union to be complete and may act upon the application, as provided under § 1263.3(c), only if it has received from the applicant one of the following items:

(i) A written statement from the applicant's appropriate State regulator that the applicant met all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section;

(ii) A written statement from the applicant's appropriate State regulator that it cannot or will not make a determination regarding the applicant's eligibility for Federal share insurance; or

(iii) A written statement from the applicant, prepared no earlier than the end of the six-month period beginning on the date of the request sent pursuant to paragraph (a)(2) of this section, certifying that the applicant did not receive from its appropriate State regulator within that six-month period either a response as described in paragraph (a)(3)(i) or (ii) of this section or a response stating that the applicant did not meet all of the eligibility requirements for Federal share insurance as of the date of the request sent pursuant to paragraph (a)(2) of this section.

(b) *Members canceling Federal share insurance.* A Bank member that is a federally insured credit union and that subsequently cancels its Federal share insurance may remain a member of the Bank, subject to all regulatory provisions applicable to insured depository institution members, provided that the Bank has determined that the institution has canceled its Federal share insurance voluntarily.

■ 8. Amend § 1263.31 by revising paragraphs (b) and (e) to read as follows:

### § 1263.31 Reports and examinations.

* * * * *

(b) Agrees that reports of examination by local, State, or Federal agencies or institutions, or by any private entity providing share insurance to a member that is a non-federally-insured credit union or a CDFI credit union, may be furnished by such authorities or entities to the Bank or FHFA upon request;

* * * * *

(e) To the extent applicable, agrees to provide to the Bank, within 20 days of filing, copies of reports of condition and operations required to be filed with:

(1) The member's appropriate Federal banking agency;

(2) The member's appropriate State regulator; or

(3) Any private entity providing share insurance to a member that is a non-federally-insured credit union or a CDFI credit union.

Dated: May 24, 2017.

**Melvin L. Watt,**

*Director, Federal Housing Finance Agency.*

[FR Doc. 2017–11207 Filed 6–2–17; 8:45 am]

**BILLING CODE 8070–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2014–0363; Directorate Identifier 2014–NE–08–AD; Amendment 39–18887; AD 2017–10–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce plc Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are superseding airworthiness directive (AD) 2015–17–19 for all Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60 turbofan engines. AD 2015–17–19 required inspection of the fan case low-pressure (LP) fuel tubes and associated clips and the fuel oil heat exchanger (FOHE) mounts and associated hardware. This AD requires an engine modification, which terminates the repetitive inspections. This AD was prompted by fractures on the LP fuel return tube at mid-span locations that were found with resulting fuel leaks. We are issuing this AD to correct the unsafe condition on these products.

**DATES:** This AD is effective July 10, 2017.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 10, 2017.

**ADDRESSES:** For service information identified in this final rule, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Web site: *https://www.aeromanager.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0363.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0363; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information, regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone:

781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2015–17–19, Amendment 39–18252 (80 FR 55232, September 15, 2015), (''AD 2015–17–19''). AD 2015–17–19 applied to the specified products. The NPRM published in the **Federal Register** on December 1, 2016 (81 FR 86630). The NPRM proposed to retain the requirements of AD 2015–17–19, and require an engine modification, which terminates the repetitive inspections.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

**Request To Delay Issuance**

American Airlines (AA) requested a delay of the issuance of this AD until the issues related to RR Alert Service Bulletin (ASB) RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016, are resolved. AA is concerned that the difficulty of incorporating RR ASB RB.211–73–AJ366 might put an airliner at risk of hydraulic fluid loss and that the production output of RR might not meet the demand of required replacements in response to an anticipated aircraft-level AD that would mandate the replacement of single-welded dampers with double-welded dampers.

We disagree. We have determined that there are currently no issues with ASB RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016. We have also determined that complying with ASB RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016, will not increase the risk of hydraulic fluid loss. Additionally, RR has determined that it has the capacity to meet the demand for replacement parts. We did not change this AD.

**Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed.

**Related Service Information Under 1 CFR Part 51**

RR has issued Alert Non-Modification Service Bulletin (NMSB) RB.211–73–AH522, Revision 4, dated January 18, 2016; Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015; and ASB RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016. Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016 describes procedures for inspecting and, if necessary, replacing worn rubber sections of the P-clip. Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015 describes procedures for inspecting and, if necessary, replacing the P-clip attaching bracket, supporting hardware, and LP fuel tube. ASB RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016 describes procedures for modification of the routing of fuel, oil, and hydraulic tube assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**Other Related Service Information**

RR has issued Service Bulletin RB.211–73–F343, Revision 4, dated May 26, 2011. This service information describes procedures for replacing the fuel tube assemblies and supporting hardware.

**Costs of Compliance**

We estimate that this AD affects 108 engines installed on airplanes of U.S. registry. We also estimate that it would take about 6 hours per engine to perform the inspections in this AD. The average labor rate is $85 per hour. We also estimate that 54 of the engines will fail the inspections required by this AD. Replacement parts cost about $4,031 per engine.

We also estimate that it would take about 50 hours per engine to modify each engine. The modification would cost about $150,000 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $16,931,754.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) AD 2015–17–19, Amendment 39–18252 (80 FR 55232, September 15, 2015) and adding the following new AD:

**2017–10–13 Rolls-Royce plc:** Amendment 39–18887; Docket No. FAA–2014–0363; Directorate Identifier 2014–NE–08–AD.

**(a) Effective Date**

This AD is effective July 10, 2017.

**(b) Affected ADs**

This AD supersedes AD 2015–17–19, Amendment 39–18252 (80 FR 55232, September 15, 2015), (''AD 2015–17–19'').

**(c) Applicability**

This AD applies to all Rolls-Royce plc (RR) RB211 Trent 768–60, 772–60, and 772B–60

turbofan engines, if fitted with fuel tube, part number (P/N) FW53576, which was incorporated through RR production modification 73–F343 or which were modified in service in accordance with RR Service Bulletin (SB) RB.211–73–F343, Revision 4, dated May 26, 2011.

**(d) Unsafe Condition**

This AD was prompted by fractures found on the low-pressure (LP) fuel return tube at mid span locations with resulting fuel leaks. We are issuing this AD to prevent failure of the fan case LP fuel tube, which could lead to an in-flight engine shutdown, loss of thrust control, and damage to the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) Within 800 flight hours (FH) after October 20, 2015 (the effective date of AD 2015–17–19), or prior to further flight, whichever occurs later, and thereafter at intervals not to exceed 800 FH, inspect the clip at the uppermost fan case LP fuel tube clip position, CP4881, and support bracket, P/N FW26692. Use Accomplishment Instructions, paragraph 3.A, of RR Alert Non-Modification Service Bulletin (NMSB) RB.211–73–AH837, Revision 1, dated November 6, 2015, or paragraph 3.A. or 3.B. of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016, to do the inspection.

(i) If the clip at the uppermost clip position, CP4881, fails inspection, before further flight, replace the clip with a part eligible for installation and inspect the fan case LP fuel tube, P/N FW53576, for fretting, and clips for cracks or failure, according to Accomplishment Instructions, paragraph 3.A. of RR Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015, or paragraph 3.A. or 3.B. of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016.

(ii) If the support bracket, P/N FW26692, fails inspection, before further flight, replace the bracket with a part eligible for installation and inspect the fan case LP fuel tube, P/N FW53576, and clips for cracks or failure, according to Accomplishment Instructions, paragraph 3.A. of RR Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015, or paragraph 3.A. or 3.B. of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016.

(2) Within 4,000 FH since new or 800 FH after October 20, 2015 (the effective date of AD 2015–17–19), or prior to further flight, whichever occurs later, and thereafter at intervals not to exceed 4,000 FH, inspect the fan case LP fuel tube, P/N FW53576, and clips, and the fuel oil heat exchanger (FOHE) mounts and hardware, for damage, wear, or fretting. Use paragraph 3.A. or 3.B., Accomplishment Instructions, of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016, to do the inspection.

(i) If the fan case LP fuel tube, P/N FW53576, fails inspection, before further flight, replace the fuel tube and clips with parts eligible for installation.

(ii) If any FOHE mount or hardware shows signs of damage, wear, or fretting, before further flight, replace the damaged part with a part eligible for installation.

(3) At each shop visit after the effective date of this AD, inspect the fan case LP fuel tubes, P/Ns FW26589, FW36335, FW26587, FW53577, and FW53576, and clips, and the FOHE mounts and hardware, for damage, wear, or fretting. Use paragraphs 3.B.(1) and 3.B.(2) of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016, to do the inspection.

(i) If any fan case LP fuel tube fails inspection, before further flight, replace the fuel tube and clips with parts eligible for installation.

(ii) If any FOHE mount or hardware shows signs of damage, wear, or fretting, before further flight, replace the damaged part with a part eligible for installation.

(4) If you replace any fan case LP fuel tube, clip, FOHE mount, or hardware as a result of the inspections in paragraphs (e)(1), (2), or (3) of this AD, you must still continue to perform the repetitive inspections specified in paragraphs (e)(1), (2), and (3) of this AD, until you comply with paragraph (e)(6) of this AD.

(5) No reports requested in any of the Alert NMSBs that are referenced in paragraphs (e)(1), (2), and (3) of this AD are required by this AD.

(6) During the next shop visit after the effective date of this AD, modify the engine in accordance with the Accomplishment Instructions, paragraphs (B) and (C), Section 3, of RR Alert Service Bulletin (ASB) RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016.

(7) After the effective date of this AD, do not install an M07 module, unless it is modified in accordance with the Accomplishment Instructions, paragraphs (B) and (C), Section 3, of RR ASB RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016.

**(f) Credit for Previous Actions**

If, before the effective date of this AD, you performed the inspections and corrective actions required by paragraph (e) of this AD using RR NMSB RB.211–73–G848, Revision 3, dated June 12, 2014; or RR Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015; or paragraph 3.A. or 3.B. of RR Alert NMSB RB.211–73–AH522, Revision 4, dated January 18, 2016; or any earlier version of those NMSBs, you met the inspection requirements in paragraph (e) of this AD.

**(g) Mandatory Terminating Action**

Modification of an engine, as required by paragraph (e)(6) of this AD, constitutes terminating action for the repetitive inspections required by paragraphs (e)(1), (2), (3), and (4) of this AD.

**(h) Definitions**

For the purposes of this AD:

(1) An ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, except that the separation of engine flanges solely for the purposes of transportation without subsequent engine maintenance is not an engine shop visit.

(2) The fan case LP fuel tubes and clips, and the FOHE mounts and hardware, are eligible for installation if they have passed the inspection requirements of paragraphs (e)(1), (2), and (3) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

**(j) Related Information**

(1) For more information about this AD, contact Wego Wang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7134; fax: 781–238–7199; email: *wego.wang@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency (EASA) AD 2016–0120, dated June 17, 2016, which supersedes EASA AD 2014–0243, Revision 1, dated December 10, 2014 and Correction dated March 23, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0363.

(3) RR SB RB.211–73–F343, Revision 4, dated May 26, 2011, which is not incorporated by reference in this AD, can be obtained from Rolls-Royce plc, using the contact information in paragraph (k)(3) of this AD.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**(k) Material Incorporated by Reference**

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Rolls-Royce plc (RR) Alert Non-Modification Service Bulletin (NMSB) RB.211–73–AH522, Revision 4, dated January 18, 2016.

(ii) RR Alert NMSB RB.211–73–AH837, Revision 1, dated November 6, 2015.

(iii) RR Alert Service Bulletin RB.211–73–AJ366, Initial Issue and Supplement, dated May 3, 2016.

(3) For RR service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–249936; email: *http://www.rolls-royce.com/contact/civil_team.jsp;* Web site: *https://www.aeromanager.com.*

(4) You may view this service information at FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(5) You may view this service information at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on May 9, 2017.

**Carlos A. Pestana,**

*Acting Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2017–11412 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Part 490

**[Docket No. FHWA–2013–0054]**

**RIN 2125–AF54**

## National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final regulation; delay of effective date; correction.

**SUMMARY:** The FHWA is correcting a document that appeared in the **Federal Register** on May 19, 2017 (82 FR 22879). That document announced the indefinite delay of specific portions of the National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program Final Rule (PM#3) (RIN 2125–AF54) and announced the initiation of additional regulatory proceedings for those portions. The portions subject to additional proceedings were misidentified as Title 49 provisions instead of Title 23 of the Code of Federal Regulations in the **DATES** section of the document. They were correctly identified elsewhere in the document. This document provides the appropriate citations in the **DATES** section as corrected at the end of this document.

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Christopher Richardson, Assistant Chief Counsel for Legislation, Regulations, and General Law, Office of Chief Counsel, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–0761. Office hours are from 8:00 a.m. to 4:30 p.m. e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access and Filing

A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, the Final Rule, and all background material may be viewed online at *http://www.regulations.gov* using the docket numbers listed above. A copy of this document will be placed on the docket. Electronic retrieval help and guidelines are available on the Web site. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Web site at *http://www.ofr.gov* and the Government Publishing Office's Web site at *http://www.gpo.gov*.

### Background

On May 19, 2017, at 82 FR 22879, FHWA published a document announcing the indefinite delay of specific portions of the National Performance Management Measures; Assessing Performance of the National Highway System, Freight Movement on the Interstate System, and Congestion Mitigation and Air Quality Improvement Program Final Rule (PM#3) (RIN 2125–AF54) and announced the initiation of additional regulatory proceedings for those portions. The portions subject to additional proceedings were misidentified as Title 49 provisions instead of Title 23 of the Code of Federal Regulations in the **DATES** section of the document. They were correctly identified elsewhere in the document. In order to avoid confusion, this document restates the appropriate citations to sections of the Final Rule subject to the indefinite delay in the **DATES** section.

### Correction

In FR Doc. 2017–10092 appearing on page 22879 in the **Federal Register** of Friday, May 19, 2017, the following corrections are made:

On page 22879, in the first column, the **DATES** section is corrected to read as follows:

''**DATES:** Effective May 19, 2017, the effective date of the amendments to 23 CFR 490.105(c)(5) and (d)(1)(v), 490.107(b)(1)(ii)(H), (b)(2)(ii)(J), (b)(3)(ii)(I), and (c)(4), 490.109(d)(1)(v) and (f)(1)(v), 490.503(a)(2), 490.505 (Definition of *Greenhouse gas (GHG)*), 490.507(b), 490.509(f), (g) and (h), 490.511(a)(2), (c), (d), and (f), and 490.513(d) published on January 18, 2017, at 82 FR 5970 is delayed indefinitely.''

Issued on: May 26, 2017.

**Walter C. Waidelich, Jr.,**

*Acting Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2017–11530 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0453]**

## Drawbridge Operation Regulation; Columbia River, Portland, OR and Vancouver, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The deviation is necessary to facilitate the movement of heavier than normal roadway traffic associated with the Independence Day fireworks show near the I–5 Bridges. This deviation allows the bridges to remain in the closed-to-navigation position during the event.

**DATES:** This deviation is effective from 9 p.m. to 11:59 p.m. on July 4, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0453 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Oregon Department of Transportation (bridge owner) requested a temporary deviation from the operating schedule for the I–5 Bridges, mile 106.5, across the Columbia River between Vancouver, WA, and Portland, OR, to facilitate safe passage of participants in the Independence Day fireworks show event. The I–5 Bridges provides three designated navigation channels with vertical clearances ranging from 39 to 72 feet above

Columbia River Datum 0.0 while the lift spans are in the closed-to-navigation position. The normal operating schedule for the I–5 Bridges is codified at 33 CFR 117.869. The subject bridges need not open to marine vessels during the deviation period from 9 p.m. to 11:59 p.m. on July 4, 2017. The bridge shall operate in accordance with 33 CFR 117.869 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from large commercial ships, tug and tow vessels to recreational pleasure craft.

Vessels able to pass under the bridges in the closed-to-navigation positions may do so at any time. The bridge will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 24, 2017

**Steven M. Fischer**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017–11524 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0439]**

## Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Fremont Bridge, across the Lake Washington Ship Canal, mile 2.6, at Seattle, WA. The deviation is necessary to accommodate heavy pedestrian and cycling traffic across the bridge during the Northwest Tandem Rally event. This deviation allows the bridge to remain in the closed-to-navigation position and need not open to maritime traffic.

**DATES:** This deviation is effective from 8:15 a.m. to 8:45 a.m. on July 2, 2017.

**ADDRESSES:** The docket for this deviation, USCG–2017–0439 is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** Seattle Department of Transportation (SDOT) owns the Fremont Bridge, and has requested a temporary deviation from the operating schedule. The subject bridge crosses the Lake Washington Ship Canal at Seattle, WA, at mile 2.6. The deviation is necessary to accommodate heavy pedestrian and cycling traffic across the bridge during the Northwest Tandem Rally cycling event. To facilitate this event, the double bascule draw of the bridge need not open for vessel traffic from 8:15 a.m. to 8:45 a.m. on July 2, 2017. The Fremont Bridge provides a vertical clearance of 14 feet (31 feet of vertical clearance for the center 36 horizontal feet) in the close-to-navigation position. The clearance is referenced to the mean water elevation of Lake Washington. The normal operating schedule for the Fremont Bridge is at 33 CFR 117.1051. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open for emergencies, and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 23, 2017.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2017–11523 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2017–0411]**

## Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Galveston, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Galveston Causeway Railroad Vertical Lift Bridge across the Gulf Intracoastal Waterway (GIWW), mile 357.2 West of Harvey Locks (WHL), at Galveston, Galveston County, Texas. The deviation is necessary to replace decking on the bridge. This deviation allows the bridge to remain in the closed-to-navigation position during the deviation period.

**DATES:** This deviation is effective from 7:30 a.m. on June 5, 2017 through 4:30 p.m. on June 8, 2017.

**ADDRESSES:** The docket for this deviation, [USCG–2017–0411] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Donna Gagliano, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *Donna.Gagliano@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Burlington Northern Santa Fe Railway Company requested a temporary deviation from the operating schedule of the Galveston Causeway Railroad Vertical Lift Bridge across the GIWW, mile 357.2 WHL, at Galveston, Galveston County, Texas. The bridge has a vertical clearance of 8.0 feet above mean high water, elevation 3 feet of the North American Vertical Datum of 1988 (NAVD88) in the closed-to-navigation position, and 73 feet above mean high water in the open-to-navigation position. This bridge is governed by 33 CFR 117.5.

This deviation was requested to allow the bridge owner to replace decking

caused by a derailment in February. This deviation allows the vertical lift bridge to remain in the closed-to-navigation position from 7:30 a.m. to 11 a.m. and from 1 p.m. to 4:30 p.m., daily, beginning June 5 through June 8, 2017, with a scheduled two-hour opening each day to facilitate passage of vessel traffic from 11 a.m. to 1 p.m., and the bridge will revert to open on demand status at 4:30 p.m. each day.

Navigation at the site of the bridge consists mainly of tows with barges and some recreational pleasure craft. The bridge can open in case of emergency. No alternate routes are available. The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: May 31, 2017.

**Eric A. Washburn,**

*Bridge Administrator, Eighth Coast Guard District.*

[FR Doc. 2017–11553 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2015–0530]**

## Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Michigan City Summerfest Fireworks, Lake Michigan

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Michigan City Summerfest Fireworks Safety Zone on a portion of Lake Michigan on July 4, 2017. This action is necessary and intended to ensure safety of life and property on navigable waters prior to, during, and immediately after the fireworks display. During the enforcement period listed below, the Coast Guard will enforce restrictions upon, and control movement of, vessels that transit this regulated area with the approval from the Captain of the Port Lake Michigan Zone.

**DATES:** The regulation in 33 CFR 165.929 will enforce item listed as (e)(35) in Table 165.929 on July 4, 2017 from 8:45 p.m. until 9:45 p.m.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Lindsay Cook, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *Lindsay.N.Cook@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Michigan City Summerfest listed as item (e)(35) in Table 165.929 of 33 CFR 165.929 from 8:45 p.m. until 9:45 p.m. on July 4, 2017. This action is being taken to provide for the safety of life on a navigable waterway during the fireworks display. Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan Zone. This safety zone encompasses all waters of Michigan City Harbor and Lake Michigan within the arc of a circle with a 1,000 foot radius from the launch site located in position 41°43.700′ N., 086°54.617′ W. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Lake Michigan or a Captain of the Port Lake Michigan designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or his or her on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan, or a designated on-scene representative may be contacted via Channel 16, VHF–FM.

Dated: May 23, 2017

**A.B. Cocanour,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2017–11486 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2017–0092]**

**RIN 1625–AA00**

## Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a permanent safety zone on the navigable waters of Port Valdez, Valdez, Alaska, in the vicinity of the Valdez Spit. The safety zone is necessary to protect persons and vessels from the hazards associated with the annual City of Valdez July 4th Fireworks Display event. This rule is intended to restrict vessels from a portion of the navigable waters of Port Valdez, in the immediate vicinity of the fireworks launch platforms, before, during, and immediately after the fireworks event.

**DATES:** This rule is effective July 3, 2017.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0092 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Walner W. Alvarez, Chief of Waterways Management Division, U.S. Coast Guard Marine Safety Unit Valdez; telephone (907) 835–7223, email *Walner.W.Alvarez@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

The Coast Guard began issuing temporary final rules establishing safety zones during the Valdez July 4th Fireworks Display. These temporary safety zones were established for each year's event beginning in 2014. The Coast Guard received no comments or

concerns from the public when the temporary safety zones were in place. Due to the repeating nature of the event, on February 28, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK (82 FR 12076). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended March 30, 2017 we received nine comments. The legal basis for the rule is the Coast Guard's authority to establish limited access areas: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

## III. Legal Authority and Need for Rule

The purpose of this rule is to enhance the safety for spectators and mariners attending a community event that involves a relatively large fireworks display. The Coast Guard anticipates that a large number of spectators will congregate around the launch position during the display. The COTP, Prince William Sound has determined that the fireworks launched near a gathering of watercrafts may pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and vessels operating in close proximity to each other. The safety zone is necessary to provide for the safety of persons and vessels attending the event in the navigable waters in the vicinity of the fireworks launch site.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received nine comments on our NPRM published February 28, 2017. All of the commenters agreed that the fireworks display justified a safety zone, with several commenters highlighting the safety dangers that fireworks presented. Based on these comments, the Coast Guard is not making changes in the regulatory text of this rule. This rule establishes a permanent safety zone on the navigable waters of Port Valdez, within a 200 yard radius of the location where the fireworks will be launched on the Valdez Spit for the City of Valdez July 4th Fireworks Display. The safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with fireworks displays. The fireworks displays are expected to occur between 10:00 p.m. and 11:00 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from 9:30 p.m. to 11:30 p.m. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP, Prince William Sound or the designated representative. Vessels will be able to transit the surrounding area and may be authorized to transit through the safety zone with the permission of the COTP or the designated representative. Before activating the zone COTP, Prince William Sound will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

This rule is being established for the safety of life on the navigable waters during the fireworks display event.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs''), directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. The Coast Guard's enforcement of the safety zone will be of short duration, approximately two hours. Furthermore, vessels may be authorized to transit through the safety zones with the permission of the COTP, Prince William Sound, Alaska. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V. B above, this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule would not call for a new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for Federalism under Executive Order 13132 if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for Federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a permanent safety zone on the navigable waters of Port Valdez, in the vicinity of the Valdez Spit. It is categorically excluded from further review in accordance with paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1713 to read as follows:

**§ 165.1713 Safety Zone; City of Valdez July 4th Fireworks, Port Valdez; Valdez, AK.**

(a) *Regulated area.* The following area is a permanent safety zone: All navigable waters of Port Valdez within a 200-yard radius from a position of 61°07′22″ N. and 146°21′13″ W. This includes the entrance to the Valdez small boat harbor.

(b) *Effective date.* This rule will be effective from 9:30 p.m. until 11:30 p.m. on July 4th of each year, or during the same time frame on specified rain dates of July 5th through July 8th of each year.

(c) *Definitions.* The following definitions apply to this section:

(1) The term ''designated representative'' means any Coast Guard commissioned, warrant or petty officer of the U. S. Coast Guard who has been designated by the COTP, Prince William Sound, to act on his or her behalf.

(2) The term ''official patrol vessel'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP, Prince William Sound.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the designated representative during periods of enforcement.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel or other official patrol vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area may request permission from the COTP via VHF Channel 16 or (907) 835–7205 (Prince William Sound Vessel Traffic Center) to request permission to do so.

(5) The Coast Guard will issue a Broadcast Notice to Mariners to advise mariners of the safety zone before and during the event.

(6) The COTP may be aided by other Federal, state, borough and local law enforcement officials in the enforcement of this regulation.

Dated: May 16, 2017.

**J.T. Lally,**

*Commander, U.S. Coast Guard, Captain of the Port, Prince William Sound, Alaska.*

[FR Doc. 2017–11572 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

**[EPA–HQ–OAR–2010–0505; FRL–9963–40–OAR]**

**RIN 2060–AT63**

## Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of reconsideration and partial stay.

**SUMMARY:** By a letter dated April 18, 2017, the Administrator announced the convening of a proceeding for reconsideration of the fugitive emission requirements at well sites and compressor station sites in the final rule, ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources,'' published in the **Federal Register** on June 3, 2016. In this action, the Environmental Protection Agency (EPA) is granting reconsideration of additional

requirements in that rule, specifically the well site pneumatic pumps standards and the requirements for certification by professional engineer. In addition, the EPA is staying for three months these rule requirements pending reconsideration.

**DATES:** This final rule is effective June 2, 2017. The action granting reconsideration is effective June 2, 2017. The stay of §§ 60.5393a(b) through (c), 60.5397a, 60.5410a(e)(2) through (5) and (j), 60.5411a(d), 60.5415a(h), 60.5420a(b)(7), (8), and (12), and (c)(15) through (17) is effective from June 2, 2017, until August 31, 2017.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205–01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (888) 627–7764; email address: *airaction@epa.gov.*

Electronic copies of this document are available on EPA's Web site at *https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry.* Copies of this document are also available at *https://www.regulations.gov,* at Docket ID No. EPA–HQ–OAR–2010–0505.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 3, 2016, the EPA published a final rule titled ''Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule,'' 81 FR 35824 (June 3, 2016) (''2016 Rule''). The 2016 Rule establishes new source performance standards (NSPS) for greenhouse gas emissions and volatile organic compound (VOC) emissions from the oil and natural gas sector. This rule addresses, among other things, fugitive emissions at well sites and compressor station sites (''fugitive emissions requirements''), and emissions from pneumatic pumps. In addition, for a number of affected facilities (*i.e.,* centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels), the rule requires certification by a professional engineer of the closed vent system design and capacity, as well as any technical infeasibility determination relative to controlling pneumatic pumps at well sites. For further information on the 2016 Rule, see 81 FR 35824 (June 3, 2016).

On August 2, 2016, a number of interested parties submitted administrative petitions to the EPA seeking reconsideration of various aspects of the 2016 Rule pursuant to section 307(d)(7)(B) of the Clean Air Act (CAA) (42 U.S.C. 7607(d)(7)(B)).[1] Those petitions include numerous objections relative to the fugitive emissions requirements, well site pneumatic pump standards, and the requirements for certification by professional engineer. Under section 307(d)(7)(B) of the CAA, the Administrator shall convene a reconsideration proceeding if, in the Administrator's judgment, the petitioner raises an objection to a rule that was impracticable to raise during the comment period or if the grounds for the objection arose after the comment period but within the period for judicial review. In either case, the Administrator must also conclude that the objection is of central relevance to the outcome of the rule. The Administrator may stay the effectiveness of the rule for up to three months during such reconsideration.

In a letter dated April 18, 2017, based on the criteria in CAA section 307(d)(7)(B), the Administrator convened a proceeding for reconsideration of the following objections relative to the fugitive emissions requirements: (1) The applicability of the fugitive emissions requirements to low production well sites, and (2) the process and criteria for requesting and receiving approval for the use of an alternative means of emission limitations (AMEL) for purposes of compliance with the fugitive emissions requirements in the 2016 Rule.

The EPA had proposed to exempt low production well sites from the fugitive emissions requirements, believing the lower production associated with these wells would generally result in lower fugitive emissions. 80 FR 56639. However, the final rule differs significantly from what was proposed in that it requires these well sites to comply with the fugitive emissions requirements based on information and rationale not presented for public comment during the proposal stage. See 81 FR 35856 (''. . . well site fugitive emissions are not correlated with levels of production, but rather based on the number of pieces of equipment and components''). It was therefore impracticable to object to this new rationale during the public comment period.

The AMEL process and criteria were included in the 2016 Rule without having been proposed for notice and comment. The EPA added the AMEL provisions in the final rule with the intent of, among other goals, reducing compliance burdens for those sources that may already be reducing fugitive emissions in accordance with a state requirement or other program that is achieving reductions equivalent to those required by the 2016 Rule. These AMEL provisions were also added to encourage the development and use of innovative technology, in particular for fugitive emissions monitoring. 81 FR 35861. However, issues and questions raised in the administrative petitions for reconsideration (*e.g.,* who can apply for and who can use an approved AMEL) suggest that sources may have difficulty understanding and applying for AMEL.

Both issues described above, which relate directly to whether certain sources must implement the fugitive emissions requirements, are of central relevance to the outcome of the 2016 Rule for the reasons stated below. Fugitive emissions are a significant source of emissions for many industries, and the EPA has promulgated numerous NSPS specifically for reducing fugitive emissions, including 40 CFR part 60, subpart KKK (addressing VOC leaks from on-shore natural gas processing plants), as standalone rules. The fact that the EPA chose here to promulgate the well site and compressor station fugitive emissions requirements along with other standards in the 2016 Rule does not make these requirements any less important than the other fugitive emissions standards; rather, because of their importance, they are a significant component of the 2016 Rule. The issues described above are important as they determine the universe of affected facilities that must implement the fugitive emission requirements; as such, they are of central relevance to the outcome of the 2016 Rule. As stated in the April 18, 2017, letter, the EPA has convened an administrative proceeding for the reconsideration of the fugitive emissions requirements in response to these two objections.

## II. Grant of Reconsideration of Additional Issues

Since issuing the April 18, 2017, letter, the EPA has identified objections to two other aspects of the 2016 Rule that meet the criteria for reconsideration under section 307(d)(7)(B) of the CAA. These objections relate to (1) the requirements for certification of closed vent system by professional engineer, and (2) the well site pneumatic pump standards.

### *A. Requirements for Certification of Closed Vent System by Professional Engineer*

For closed vent systems used to comply with the emission standards for

[1] Copies of these petitions are included in the docket for the 2016 Rule, Docket ID No. EPA–HQ–OAR–2010–0505.

various equipment used in the oil and natural gas sector, the 2016 Rule requires certification by a professional engineer (PE) that a closed vent system design and capacity assessment was conducted under his or her direction or supervision and that the assessment and resulting report were conducted pursuant to the requirements of the 2016 Rule (''PE certification requirement''). Several petitioners for administrative reconsideration assert that the PE certification requirement was not proposed for notice and comment.[2] One petitioner notes that no costs associated with obtaining such certification were considered or provided for review during the proposal process.[3] The petitioner claims that there is no quantifiable benefit to the environment from this additional compliance demonstration requirement, while there is significant expense involved.[4]

Section 111 of the CAA requires that the EPA consider, among other factors, the cost associated with establishing a new source performance standard. See 111(a)(1) of the CAA. The statute is thus clear that cost is an important consideration in determining whether to impose a requirement. In finalizing the 2016 Rule, the EPA made clear that it viewed the PE certification requirement to be an important aspect of a number of performance standards in the that rule. The EPA acknowledges that it had not analyzed the costs associated with the PE certification requirement; therefore, it was impracticable for petitioners to provide meaningful comments during the comment period on whether the improved environmental performance this requirement may achieve justifies the associated costs and other compliance burden. This issue is of central relevance to the outcome of the 2016 Rule because the rule requires this PE certification for demonstrating compliance for a number of different standards, including the standards for centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels. For the reasons stated above, the EPA is granting reconsideration of the PE certification requirement.

*B. Technical Infeasibility Determination (Well Site Pneumatic Pump Standards)*

In the 2016 Rule, the EPA exempts a pneumatic pump at a well site from the emission reduction requirement if it is technically infeasible to route the pneumatic pump to a control device or a process. 81 FR 35850. However, the rule requires that such technical infeasibility be determined and certified by a ''qualified professional engineer'' as that term is defined in the final rule. During the proposal stage, the EPA did not propose or otherwise suggest exempting well site pneumatic pumps from emission control based on such certification. In fact, the technical infeasibility exemption itself was added during the final rule stage. Further, this certification requirement differs significantly from how the EPA has previously addressed another ''technical infeasibility'' issue encountered by this industry. Specifically, the oil and gas NSPS subpart OOOO, which was promulgated in 2012, exempts hydraulically fractured gas well completions from performing a reduced emission completion (REC) if it is not technically feasible to do so, and requires documentation and recordkeeping of the technical infeasibility. See 40 CFR 60.5375. The 2016 Rule extends the REC requirement and associated technical infeasibility exemption to hydraulically fractured oil well completions and requires more detailed documentation of technical infeasibility. Neither subpart OOOO nor the 2016 Rule require that REC technical infeasibility be certified by a qualified professional engineer, nor was such requirement proposed or otherwise raised during the public comment period for these rules. In light of the fact that the EPA had not proposed such certification requirement for pneumatic pumps, and how this requirement differs from the EPA's previous treatment of a similar issue as described above, one could not have anticipated that the 2016 Rule would finalize such certification requirement for pneumatic pumps in the 2016 Rule. Further, believing that ''circumstances that could otherwise make control of a pneumatic pump technically infeasible at an existing location can be addressed in the site's design and construction,'' the EPA does not allow such exemption for new developments in the 2016 Rule. 40 CFR 60.5393a(b)(5); see also, 81 FR 35849. The 2016 Rule refers to such new developments as ''greenfield,'' which is defined as an ''entirely new construction.'' 40 CFR 60.5430a.

The provisions described above were included in the 2016 Rule without having been proposed for notice and comment, and numerous related objections and issues were raised in the reconsideration petitions. With respect to the requirement that technical infeasibility be certified by a professional engineer, petitioners raised the same issues as those for closed vent system certification discussed in section II.A. In addition, several petitions find the definition of greenfield unclear. For example, one petitioner questions whether the term ''new'' as used in this definition is synonymous to how that term is defined in section 111 of the CAA. Additional questions include whether a greenfield remains forever a greenfield, considering that site designs may change by the time that a new control or pump is installed (which may be years later). Petitioners also object to EPA's assumption that the technical infeasibility encountered at existing well sites can be addressed when ''new'' sites are developed. The issues described above dictate whether one must achieve the emission reduction required under the well site pneumatic pump standards, which were a major addition to the existing oil and gas NSPS regulations through promulgation of the 2016 Rule. Therefore, these issues are of central relevance to the outcome of the 2016 Rule.

As announced in the April 18, 2017, letter, and as further announced in this document, the Administrator has convened an administrative reconsideration proceeding. As part of the proceeding, the EPA will prepare a notice of proposed rulemaking that will provide the petitioners and the public an opportunity to comment on the rule requirements and associated issues identified above, as well as those for which reconsideration was granted in the April 18, 2017, letter. During the reconsideration proceeding, the EPA intends to look broadly at the entire 2016 Rule. For a copy of this letter and the administrative reconsideration petitions, please see Docket ID No. EPA–HQ–OAR–2010–0505.

## III. Stay of Certain Provisions

By this document, in addition to the grant of reconsideration discussed in section II above, the EPA is staying the effectiveness of certain aspects of the 2016 Rule for three months pursuant to section 307(d)(7)(B) of the CAA pending reconsideration of the requirements and associated issues described above and in the April 18, 2017, letter. Specifically, the EPA is staying the effectiveness of the fugitive emissions requirements, the standards for pneumatic pumps at well sites, and the certification by a professional engineer requirements. As explained above, the low production well sites and AMEL issues under reconsideration determine the universe of sources that must implement the fugitive emissions requirements. The

[2] See Docket ID No. EPA–HQ–OAR–2010–0505–7682 and Docket ID No. EPA–HQ–OAR–2010–0505–7686.

[3] See Docket ID No. EPA–HQ–OAR–2010–0505–7682.

[4] Id.

2016 Rule requires compliance with the closed vent system requirements, including certification by a professional engineer, in order to meet the emissions standards for a wide range of equipment (centrifugal compressors, reciprocating compressors, pneumatic pumps, and storage vessels); therefore, the issues relative to closed vent certification affect the ability of these equipment to comply with the 2016 Rule. The technical infeasibility exemption and the associated certification by professional engineer requirement, as well as the ''greenfield'' issues described above, dictate whether a source must comply with the emission reduction requirement for well site pneumatic pumps. In light of the uncertainties these issues generate regarding the application and/or implementation of the fugitive emissions requirements, the well site pneumatic pumps standards and the certification by professional engineers requirements, the EPA believes it is reasonable to stay the effectiveness of these requirements in the 2016 Rule, pending reconsideration. Therefore, pursuant to section 307(d)(7)(B) of the CAA, the EPA hereby stays the effectiveness of these requirements for three months.

This stay will remain in place until August 31, 2017.

**List of Subjects in 40 CFR Part 60**

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping.

Dated: May 26, 2017.

**E. Scott Pruitt,**

*Administrator.*

■ For the reasons cited in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

## PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart OOOOa—[Amended]

■ 2. Section 60.5393a is amended by:
■ a. Staying paragraphs (b) and (c) from June 2, 2017, until August 31, 2017; and
■ b. Adding paragraph (f).

The addition reads as follows:

**§ 60.5393a What GHG and VOC standards apply to pneumatic pump affected facilities?**

* * * * *

(f) Pneumatic pumps at a well site are not subject to the requirements of paragraph (d) and (e) of this section from June 2, 2017, until August 31, 2017.

**§ 60.5397a [Amended]**

■ 3. Section 60.5397a is stayed from June 2, 2017, until August 31, 2017.
■ 4. Section 60.5410a is amended by:
■ a. Staying paragraphs (e)(2) through (5) from June 2, 2017, until August 31, 2017;
■ b. Adding paragraph (e)(8); and
■ c. Staying paragraph (j) from June 2, 2017, until August 31, 2017.

The addition reads as follows:

**§ 60.5410a How do I demonstrate initial compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, collection of fugitive emissions components at a compressor station, and equipment leaks and sweetening unit affected facilities at onshore natural gas processing plants?**

* * * * *

(e) * * *

(8) Pneumatic pump affected facilities at a well are not subject to the requirements of (e)(6) and (7) of this section from June 2, 2017, until August 31, 2017.

* * * * *

■ 5. Section 60.5411a is amended by:
■ a. Revising the introductory text;
■ b. Staying paragraph (d) from June 2, 2017, until August 31, 2017; and
■ c. Adding paragraph (e).

The revision and addition read as follows:

**§ 60.5411a What additional requirements must I meet to determine initial compliance for my covers and closed vent systems routing emissions from centrifugal compressor wet seal fluid degassing systems, reciprocating compressors, pneumatic pumps and storage vessels?**

You must meet the applicable requirements of this section for each cover and closed vent system used to comply with the emission standards for your centrifugal compressor wet seal degassing systems, reciprocating compressors, pneumatic pumps and storage vessels except as provided in paragraph (e) of this section.

* * * * *

(e) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraph (a) of this section from June 2, 2017, until August 31, 2017.

■ 6. Section 60.5415a is amended by:
■ a. Revising paragraph (b) introductory text and adding paragraph (b)(4); and
■ b. Staying paragraph (h) from June 2, 2017, until August 31, 2017.

The revision and addition read as follows:

**§ 60.5415a How do I demonstrate continuous compliance with the standards for my well, centrifugal compressor, reciprocating compressor, pneumatic controller, pneumatic pump, storage vessel, collection of fugitive emissions components at a well site, and collection of fugitive emissions components at a compressor station affected facilities, and affected facilities at onshore natural gas processing plants?**

* * * * *

(b) For each centrifugal compressor affected facility and each pneumatic pump affected facility, you must demonstrate continuous compliance according to paragraph (b)(3) of this section except as provided in paragraph (b)(4) of this section. For each centrifugal compressor affected facility, you also must demonstrate continuous compliance according to paragraphs (b)(1) and (2) of this section.

* * * * *

(4) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraphs (b)(3) of this section from June 2, 2017, until August 31, 2017.

* * * * *

■ 7. Section 60.5416a is amended by revising the introductory text and adding paragraph (d) to read as follows:

**§ 60.5416a What are the initial and continuous cover and closed vent system inspection and monitoring requirements for my centrifugal compressor, reciprocating compressor, pneumatic pump, and storage vessel affected facilities?**

For each closed vent system or cover at your storage vessel, centrifugal compressor, reciprocating compressor and pneumatic pump affected facilities, you must comply with the applicable requirements of paragraphs (a) through (c) of this section, except as provided in paragraph (d) of this section.

* * * * *

(d) Pneumatic pump affected facilities at a well site are not subject to the requirements of paragraphs (a) and (b) of this section from June 2, 2017, until August 31, 2017.

■ 8. Section 60.5420a is amended by:
■ a. Revising paragraph (b) introductory text;
■ b. Staying paragraphs (b)(7), (8), and (12) from June 2, 2017, until August 31, 2017;
■ c. Adding paragraph (b)(13); and
■ d. Staying paragraphs (c)(15) through (17) from June 2, 2017, until August 31, 2017.

The revision and addition read as follows:

**§ 60.5420a What are my notification, reporting, and recordkeeping requirements?**

* * * * *

(b) *Reporting requirements.* You must submit annual reports containing the information specified in paragraphs (b)(1) through (8) and (12) of this section and performance test reports as specified in paragraph (b)(9) or (10) of this section, if applicable, except as provided in paragraph (b)(13) of this section. You must submit annual reports following the procedure specified in paragraph (b)(11) of this section. The initial annual report is due no later than 90 days after the end of the initial compliance period as determined according to § 60.5410a. Subsequent annual reports are due no later than same date each year as the initial annual report. If you own or operate more than one affected facility, you may submit one report for multiple affected facilities provided the report contains all of the information required as specified in paragraphs (b)(1) through (8) of this section, except as provided in paragraph (b)(13) of this section. Annual reports may coincide with title V reports as long as all the required elements of the annual report are included. You may arrange with the Administrator a common schedule on which reports required by this part may be submitted as long as the schedule does not extend the reporting period.

* * * * *

(13) The collection of fugitive emissions components at a well site (as defined in § 60.5430a), the collection of fugitive emissions components at a compressor station (as defined in § 60.5430a), and pneumatic pump affected facilities at a well site (as defined in § 60.5365a(h)(2)) are not subject to the requirements of paragraph (b)(1) of this section from June 2, 2017, until August 31, 2017.

* * * * *

[FR Doc. 2017–11457 Filed 6–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[EPA–R08–OAR–2017–0171; FRL–9963–21–Region 8]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Negative Declarations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** With this direct final rule, the Environmental Protection Agency (EPA) is taking action to approve the negative declarations for several designated facility classes in various states of Region 8. First, the EPA is taking direct final action in approving the negative declarations for small municipal waste combustor (MWC) units submitted by the states of Colorado, Montana, North Dakota, South Dakota, and Wyoming. Second, the EPA is taking direct final action in approving the negative declarations for large MWC units submitted by the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Third, the EPA is taking direct final action in approving the negative declarations for commercial industrial solid waste incineration (CISWI) units submitted by the states of Montana, South Dakota, Utah, and Wyoming. Fourth, the EPA is taking direct final action in approving the negative declarations for other solid waste incineration (OSWI) units submitted by the states of Montana, North Dakota, South Dakota, Utah, and Wyoming. Each state included in this action has notified the EPA in a letter of negative declaration that there are no existing designated facilities, of the source category specified in each particular letter of negative declaration, subject to the requirements of sections 111(d) and 129 of the Clean Air Act (CAA or the ''Act'') currently operating within the jurisdictional boundaries of their state. The EPA is accepting the negative declarations in accordance with sections 111(d) and 129(b) of the Act. This is a direct final action without prior notice and comment because the action is deemed noncontroversial.

**DATES:** This direct final rule is effective on August 4, 2017 without further notice, unless the EPA receives adverse written comments on or before July 5, 2017. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2017–0171 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6396, *lohrke.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Why is EPA using a direct final rule?

The EPA is publishing this rule without prior proposal because the agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of today's **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to publish the negative declarations should relevant adverse comments be filed. This rule will be effective August 4, 2017 without further notice unless the agency receives relevant adverse comments by July 5, 2017.

If the EPA receives adverse comments, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. The EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

### II. Background

The EPA's statutory authority for regulating new and existing solid waste incineration units is outlined in CAA sections 111 and 129. Section 129 of the

Act is specific to solid waste combustion, and requires the EPA to establish performance standards for each category of solid waste incineration units, which includes the categories addressed in today's notice. Section 111(b) of the Act gives the EPA the statutory authority to promulgate new source performance standards (NSPS) for new incineration units. Section 111(d) requires states to submit plans to control designated pollutants at existing incineration facilities (designated facilities) whenever standards of performance have been established under section 111(b) and the EPA has established emission guidelines for existing designated facilities. Emission guidelines are implemented and enforced by state pollution control agencies through these EPA-approved section 111(d)/129 state plans or a promulgated federal plan adopted by the state. If a state does not have any existing solid waste incineration units for the relevant emission guidelines, the state shall submit a letter to the EPA certifying that no such units exist within the state (*i.e.,* negative declaration) in lieu of a state plan.

Emission guidelines for small MWC units were originally promulgated alongside guidelines for large MWC units in December 1995 (40 CFR part 60, subpart Cb). These guidelines were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997 when the court held that the EPA should separately regulate small MWC units to remain consistent with the provisions of section 129 of the CAA. On December 6, 2000, the EPA issued a final rule (65 FR 76378) to reestablish emission guidelines and compliance times for existing small MWC units constructed on or before August 30, 1999, that have capacities of 35 to 250 tons per day of municipal solid waste (40 CFR part 60, subpart BBBB). The federal plan was promulgated on January 31, 2003 (68 FR 5144), at 40 CFR part 62, subpart JJJ.

In December 1995, the EPA adopted NSPS (40 CFR part 60, subpart Eb) and emission guidelines (40 CFR part 60, subpart Cb) for large MWC units. The EPA conducted a five-year review of the NSPS and emission guidelines for large MWC units as required by section 129(a)(5) of the CAA and proposed amendments on December 19, 2005 (70 FR 75348). On May 10, 2006, after consideration of comments received on this proposal, revisions and amendments to the emission guidelines and compliance times for large MWC units were promulgated at 40 CFR part 60, subpart Cb (71 FR 27323).

On February 7, 2013, revision of the emission guidelines and compliance times for commercial and industrial solid waste incineration units was adopted and promulgated (78 FR 9112) at 40 CFR part 60, subpart DDDD. Reconsideration of certain aspects of the final rule due to public comment resulted in minor amendments to the CISWI rule being made on June 23, 2016. On October 3, 2003, the EPA promulgated the federal plan for CISWI units that commenced construction on or before November 30, 1999 (68 FR 57539) at 40 CFR part 62, subpart III.

On December 16, 2005, emission guidelines and compliance times were promulgated for existing other solid waste incineration units that commenced construction on or before December 9, 2004 (70 FR 74907) at 40 CFR part 60, subpart FFFF. Reconsideration of certain aspects of the final rule resulted in minor amendments to the OSWI rule being made on January 22, 2007.

## III. State Submittals

### *A. Existing Small Municipal Waste Combustion Units Negative Declarations From the States of Colorado, Montana, North Dakota, South Dakota, and Wyoming*

The Colorado Department of Public Health and Environment, the Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, and the Wyoming Department of Environmental Quality have submitted letters certifying that there are no existing small municipal waste combustion units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart BBBB. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under subpart BBBB—Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999. The dates of submission for these letters are outlined in the table below.

| State agency submitting the negative declaration | Date of letter to EPA Region 8 office |
|---|---|
| Colorado Department of Public Health and Environment | January 8, 2001. |
| Montana Department of Environmental Quality | June 27, 2005. |
| North Dakota Department of Health | November 27, 2001. |
| South Dakota Department of Environment and Natural Resources | January 25, 2002. |
| Wyoming Department of Environmental Quality | October 9, 2001. |

### *B. Existing Large Municipal Solid Waste Combustion Units Continued Negative Declarations From the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming*

The Colorado Department of Public Health and Environment, the Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters continuing their certification that there are no existing large municipal solid waste combustion units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart Cb. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart Cb—Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994. The dates of submission for these letters are outlined in the table below.

| State agency submitting the negative declaration | Date of letter to EPA Region 8 office |
|---|---|
| Colorado Department of Public Health and Environment | October 13, 2015. |

| State agency submitting the negative declaration | Date of letter to EPA Region 8 office |
|---|---|
| Montana Department of Environmental Quality | March 18, 2015. |
| North Dakota Department of Health | February 26, 2015. |
| South Dakota Department of Environment and Natural Resources | April 3, 2017. |
| Utah Department of Environmental Quality | March 22, 2017. |
| Wyoming Department of Environmental Quality | April 23, 2015. |

*C. Existing Commercial Industrial Solid Waste Incineration Units Continued Negative Declarations From the States of Montana, South Dakota, Utah, and Wyoming*

The Montana Department of Environmental Quality, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters continuing their certification that there are no existing commercial industrial solid waste incineration units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart DDDD. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart DDDD—Emissions Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units. The dates of submission for these letters are outlined in the table below.

| State agency submitting the negative declaration | Date of letter to EPA Region 8 office |
|---|---|
| Montana Department of Environmental Quality | March 18, 2015. |
| South Dakota Department of Environment and Natural Resources | April 3, 2017. |
| Utah Department of Environmental Quality | March 22, 2017. |
| Wyoming Department of Environmental Quality | February 23, 2017. |

*D. Existing Other Solid Waste Incineration Units Negative Declarations From the States of Montana, North Dakota, South Dakota, Utah, and Wyoming*

The Montana Department of Environmental Quality, the North Dakota Department of Health, the South Dakota Department of Environment and Natural Resources, the Utah Department of Environmental Quality, and the Wyoming Department of Environmental Quality have submitted letters certifying that there are no existing other solid waste incineration units under state jurisdiction in their respective states subject to 40 CFR part 60, subpart FFFF. These negative declarations meet the requirements of 40 CFR 62.06, and the EPA outlines no formal review process for negative declaration letters under 40 CFR part 60, subpart FFFF—Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004. The dates of submission for these letters are outlined in the table below.

| State agency submitting the negative declaration | Date of letter to EPA Region 8 office |
|---|---|
| Montana Department of Environmental Quality | March 18, 2015. |
| North Dakota Department of Health | September 20, 2006. |
| South Dakota Department of Environment and Natural Resources | May 4, 2007. |
| Utah Department of Environmental Quality | December 20, 2006. |
| Wyoming Department of Environmental Quality | May 3, 2007. |

## IV. Final Action

The EPA is approving the negative declarations for existing small MWC units for the states of Colorado, Montana, North Dakota, South Dakota, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also approving the updated negative declarations for existing large MWC units for the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also publishing the updated negative declarations for existing CISWI units for the states of Montana, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

The EPA is also approving the negative declarations for existing OSWI units for the states of Montana, North Dakota, South Dakota, Utah, and Wyoming. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source category.

## V. Statutory and Executive Order Review

Under the CAA, the Administrator is required to approve a section 111(d)/129 plan submission that complies with the provisions of the Act and applicable federal regulations at 40 CFR 62.04. Thus, in reviewing section 111(d)/129 plan submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this action:

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,

• Is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

In addition, this rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 2017. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. Under CAA section 307(b)(2), this action may not be challenged later in proceedings to enforce its requirements.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial industrial solid waste incineration, Intergovernmental relations, Municipal solid waste combustion, Other solid waste incineration, Reporting and recordkeeping requirements.

Dated: May 12, 2017.

**Suzanne J. Bohan,**

*Acting Regional Administrator, Region 8.*

For the reasons stated in the preamble, EPA amends 40 CFR part 62 as set forth below:

## PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart G—Colorado

■ 2. Revise § 62.1370 to read as follows:

**§ 62.1370 Identification of plan-negative declaration.**

Letter from the Colorado Department of Public Health and Environment submitted October 13, 2015, certifying that there are no existing large municipal waste combustion units within the State of Colorado that are subject to 40 CFR part 60, subpart Cb.

■ 3. Subpart G is amended by adding an undesignated center heading and § 62.1400 to read as follows:

**Emissions From Existing Small Municipal Waste Combustion Units**

**§ 62.1400 Identification of plan-negative declaration.**

Letter from the Colorado Department of Public Health and Environment submitted January 8, 2001, certifying that there are no existing small municipal waste combustion units within the State of Colorado that are subject to 40 CFR part 60, subpart BBBB.

### Subpart BB—Montana

■ 4. Revise § 62.6620 to read as follows:

**§ 62.6620 Identification of plan-negative declaration.**

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing large municipal waste combustion units within the State of Montana that are subject to 40 CFR part 60, subpart Cb.

■ 5. Revise § 62.6630 to read as follows:

**§ 62.6630 Identification of plan-negative declaration.**

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Montana that are subject to 40 CFR part 60, subpart DDDD.

■ 6. Subpart BB is amended by adding an undesignated center heading and § 62.6650 followed by an undesignated center heading and § 62.6660 to read as follows:

**Emissions From Existing Small Municipal Waste Combustion Units**

**§ 62.6650 Identification of plan-negative declaration.**

Letter from the Montana Department of Environmental Quality submitted June 27, 2005, certifying that there are no existing small municipal waste combustion units within the State of Montana that are subject to 40 CFR part 60, subpart BBBB.

**Emissions From Existing Other Solid Waste Incineration Units**

**§ 62.6660 Identification of plan-negative declaration.**

Letter from the Montana Department of Environmental Quality submitted March 18, 2015, certifying that there are no existing other solid waste incineration units within the State of Montana that are subject to 40 CFR part 60, subpart FFFF.

## Subpart JJ—North Dakota

■ 7. Revise § 62.8620 to read as follows:

### § 62.8620 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted February 26, 2015, certifying that there are no existing large municipal waste combustion units within the State of North Dakota that are subject to 40 CFR part 60, subpart Cb.

■ 8. Subpart JJ is amended by adding an undesignated center heading and § 62.8650 followed by an undesignated center heading and § 62.8660 to read as follows:

**Emissions From Existing Small Municipal Waste Combustion Units**

### § 62.8650 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted November 27, 2001, certifying that there are no existing small municipal waste combustion units within the State of North Dakota that are subject to 40 CFR part 60, subpart BBBB.

**Emissions From Existing Other Solid Waste Incineration Units**

### § 62.8660 Identification of plan-negative declaration.

Letter from the North Dakota Department of Health submitted September 20, 2006, certifying that there are no existing other solid waste incineration units within the State of North Dakota that are subject to 40 CFR part 60, subpart FFFF.

## Subpart QQ—South Dakota

■ 9. Revise § 62.10370 to read as follows:

### § 62.10370 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted April 3, 2017, certifying that there are no existing large municipal waste combustion units within the State of South Dakota that are subject to 40 CFR part 60, subpart Cb.

■ 10. Revise § 62.10380 to read as follows:

### § 62.10380 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted April 3, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of South Dakota that are subject to 40 CFR part 60, subpart DDDD.

■ 11. Subpart QQ is amended by adding an undesignated center heading and § 62.10400 followed by an undesignated center heading and § 62.10410 to read as follows:

**Emissions From Existing Small Municipal Waste Combustion Units**

### § 62.10400 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted January 25, 2002, certifying that there are no existing small municipal waste combustion units within the State of South Dakota that are subject to 40 CFR part 60, subpart BBBB.

**Emissions From Existing Other Solid Waste Incineration Units**

### § 62.10410 Identification of plan-negative declaration.

Letter from the South Dakota Department of Environment and Natural Resources submitted May 4, 2007, certifying that there are no existing other solid waste incineration units within the State of South Dakota that are subject to 40 CFR part 60, subpart FFFF.

## Subpart TT—Utah

■ 12. Revise § 62.11130 to read as follows:

### § 62.11130 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted March 22, 2017, certifying that there are no existing large municipal waste combustion units within the State of Utah that are subject to 40 CFR part 60, subpart Cb.

■ 13. Revise § 62.11140 to read as follows:

### § 62.11140 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted March 22, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Utah that are subject to 40 CFR part 60, subpart DDDD.

■ 14. Subpart TT is amended by adding an undesignated center heading and § 62.11160 to read as follows:

**Emissions From Existing Other Solid Waste Incineration Units**

### § 62.11160 Identification of plan-negative declaration.

Letter from the Utah Department of Environmental Quality submitted December 20, 2006, certifying that there are no existing other solid waste incineration units within the State of Utah that are subject to 40 CFR part 60, subpart FFFF.

## Subpart ZZ—Wyoming

■ 15. Revise § 62.12620 to read as follows:

### § 62.12620 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted April 23, 2015, certifying that there are no existing large municipal waste combustion units within the State of Utah that are subject to 40 CFR part 60, subpart Cb.

■ 16. Revise § 62.12630 to read as follows:

### § 62.12630 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted February 23, 2017, certifying that there are no existing commercial and industrial solid waste incineration units within the State of Wyoming that are subject to 40 CFR part 60, subpart DDDD.

■ 17. Subpart ZZ is amended by adding an undesignated center heading and § 62.12650, followed by an undesignated center heading and § 62.12660 to read as follows:

**Emissions From Existing Small Municipal Waste Combustion Units**

### § 62.12650 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted October 9, 2001, certifying that there are no existing small municipal waste combustion units within the State of Wyoming that are subject to 40 CFR part 60, subpart BBBB.

**Emissions From Existing Other Solid Waste Incineration Units**

### § 62.12660 Identification of plan-negative declaration.

Letter from the Wyoming Department of Environmental Quality submitted May 3, 2007, certifying that there are no existing other solid waste incineration units within the State of Wyoming that are subject to 40 CFR part 60, subpart FFFF.

[FR Doc. 2017–11576 Filed 6–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 64

**[Docket ID FEMA–2017–0002; Internal Agency Docket No. FEMA–8483]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *https://www.fema.gov/national-flood-insurance-program-community-status-book.*

**DATES:** The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

**FOR FURTHER INFORMATION CONTACT:** If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* FEMA has determined that the community suspension(s) included in this rule is a non-discretionary action and therefore the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) does not apply.

*Regulatory Flexibility Act.* The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This rule meets the applicable standards of Executive Order 12988.

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

**§ 64.6 [Amended]**

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in SFHAs |
|---|---|---|---|---|
| **Region V** | | | | |
| Indiana: | | | | |
| Salem, City of, Washington County ..... | 180279 | May 5, 1972, Emerg; August 15, 1978, Reg; June 21, 2017, Susp. | June 21, 2017 .. | June 21, 2017 |
| Washington County, Unincorporated Areas. | 180446 | July 30, 1996, Emerg; N/A, Reg; June 21, 2017, Susp. | .....do * ..... | Do. |
| **Region VII** | | | | |
| Iowa: | | | | |
| Earlham, City of, Madison County ..... | 190570 | September 6, 1977, Emerg; September 30, 1988, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| Madison County, Unincorporated Areas | 190887 | September 10, 1993, Emerg; September 1, 1996, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| Patterson, City of, Madison County ..... | 190451 | March 27, 1979, Emerg; January 1, 1987, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| St. Charles, City of, Madison County .... | 190802 | August 16, 2010, Emerg; October 6, 2010, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| Winterset, City of, Madison County ..... | 190944 | April 24, 1992, Emerg; May 3, 1993, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| **Region VIII** | | | | |
| North Dakota: Foster County, Unincorporated Areas. | 380696 | March 26, 1997, Emerg; May 4, 1998, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| **Region IX** | | | | |
| California: | | | | |
| Arcata, City of, Humboldt County ..... | 060061 | May 29, 1975, Emerg; May 2, 1983, Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| Eureka, City of, Humboldt County ..... | 060062 | June 9, 1975, Emerg; June 1, 1982 Reg; June 21, 2017, Susp. | .....do ..... | Do. |
| Humboldt County, Unincorporated Areas. | 060060 | September 11, 1974, Emerg; July 19, 1982, Reg; June 21, 2017, Susp. | .....do ..... | Do. |

-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: May 23, 2017.

**Michael M. Grimm,**

*Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2017–11485 Filed 6–2–17; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 7

**RIN 2105–AE62**

## Updates to Comply With the FOIA Improvement Act of 2016 and Other Technical Amendments; Final Rule; Correction

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Transportation is correcting a final rule that appeared in the **Federal Register** on May 5, 2017. The document issued a final rule that made technical changes to the Department of Transportation's regulations prescribing procedures for the public availability of information.

**DATES:** This final rule is effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Claire McKenna, Senior Attorney, Office of the General Counsel, U.S. Department of Transportation, Washington, DC, at *claire.mckenna@dot.gov* or (202) 366–0365.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2017–08925 appearing on page 21136 in the **Federal Register** on May 5, 2017, the following corrections are made:

### I. Purpose of the Regulatory Action [Corrected]

■ 1. On page 21136, the last sentence of the third column stating, ''In section 7.23, the rule amends subparagraph (c)(5) to state that Exemption 5's deliberative process privilege only applies to records created 25 years or more before the date on which the records are requested, and the rule adds a new paragraph (d) to prohibit DOT from withholding information under this section unless DOT reasonably foresees that disclosure will harm an interest protected by a FOIA exemption, or the disclosure is prohibited by law'' is corrected to read, ''In section 7.23, the rule amends paragraph (c)(5) to state that Exemption 5's deliberative process privilege does not apply to records created 25 years or more before the date on which the records are requested, and the rule adds a new paragraph (d) to prohibit DOT from withholding information under this section unless DOT reasonably foresees that disclosure will harm an interest protected by a FOIA exemption, or the disclosure is prohibited by law.''

### § 7.23 [Corrected]

■ 2. On page 21139, in the first and second columns, amendatory instruction 4 and the amended text of § 7.23 are corrected to read as follows:

■ 4. Amend § 7.23 as follows:

■ a. Revise paragraph (c)(5);

■ b. Redesignate paragraphs (d) and (e) as paragraphs (e) and (f) respectively; and

■ c. Add new paragraph (d).

The revision and addition read as follows:

**§ 7.23 What limitations apply to disclosure?**

* * * * *

(c) * * *

(5) Inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;

* * * * *

(d) *Application of exemptions.* DOT shall withhold information pursuant to a statutory exemption only if:

(1) DOT reasonably foresees that disclosure would harm an interest protected by an exemption under paragraph (c) of this section; or

(2) Disclosure is prohibited by law or otherwise exempted from disclosure under paragraph (c)(3) of this section.

* * * * *

Issued on: May 31, 2017.

**Judith S. Kaleta,**

*Acting General Counsel.*

[FR Doc. 2017–11579 Filed 6–2–17; 8:45 am]

BILLING CODE 4910–9X–P

# Proposed Rules

Federal Register
Vol. 82, No. 106
Monday, June 5, 2017

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0522; Directorate Identifier 2015–SW–068–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Northrop Grumman LITEF GmbH LCR–100 Attitude and Heading Reference System Units

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Northrop Grumman LITEF GmbH LCR–100 Attitude and Heading Reference System (AHRS) units installed on various aircraft. This proposed AD would require removing certain LCR–100 AHRS units from service. This proposed AD is prompted by test results showing loss of or invalid data. The proposed actions are intended to prevent an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by August 4, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0522; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Northrop Grumman LITEF GmbH, Customer Service—Commercial Avionics, Loerracher Str. 18, 79115 Freiburg, Germany; telephone +49 (761) 4901–142; fax +49 (761) 4901–773; email *ahrs.support@ng-litef.de.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Nick Rediess, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7159; email *nicholas.rediess@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

We propose to adopt a new AD for Northrop Grumman LITEF GmbH LCR–100 AHRS units with a part number 145130–2000, 145130–2001, 145130–7000, 145130–7001, or 145130–7100. These units are installed on various airplanes and helicopters and are often used to supply attitude and heading data to Primary Flight Displays (PFDs), autopilots, and other avionics. These units may be installed as part of a type-certificated design, an FAA supplemental type certificate, or a field approval. Northrop Grumman LITEF GmbH discovered the erroneous behavior of an AHRS unit during laboratory testing. The erroneous behavior occurs when the unit's continuous built-in test detects a failure and then does not correctly reset. When this occurs, the analog outputs of attitude and heading data freeze and the transmission of digital outputs of attitude and heading stops. The effect of the errors depends on how the AHRS unit outputs are used in a particular installation. For instance, if the AHRS unit analog outputs are used by a PFD without any automatic comparison with another source of data, the PFD will display misleading information, which could lead to loss of control of the aircraft. Other installations using the analog outputs might include an automatic comparison feature that detects and provides an alert if the attitude and heading data is frozen. A similar situation would occur in installations that use the digital outputs since the erroneous behavior would be detected. This proposed AD would only be applicable to installations of the AHRS units using analog outputs for the display of primary flight information or for input to an autopilot without automatic output comparison since these installations do not provide any warning indication of the erroneous behavior.

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2015–0093, dated May 27, 2015, to correct an unsafe condition for certain part-numbered Northrop Grumman LITEF GmbH LCR–100 AHRS units. EASA states these units are known to be installed on, but not limited to, Pilatus PC–12, Learjet 31A, Cessna 560XL, RUAG (Dornier) 228 series, and PZL Mielec M28 (Sky Truck) airplanes; and Bell Helicopter Textron, Inc., 412EP, Bell Helicopter Textron Canada 407, and Sikorsky S–76C helicopters. EASA advises that laboratory tests of the AHRS units discovered that when the built-in test detects failures and resets the system, the units are not executing the system reset properly. According to EASA, this results in a freeze of analog attitude and heading output data without detection or warning to the pilot. EASA states that installations vary, but if there is no automatic comparison of analog output to detect unit failure, this condition, if not corrected, could lead to undetected attitude and heading errors, possibly resulting in loss of control of the aircraft.

This proposed AD would also affect AD 2010–26–09 (75 FR 81424, December 28, 2010), which applies to Sikorsky Model S–76A, B, and C helicopters with an AHRS unit P/N 145130–7100 installed. Since this proposed AD would require the removal of P/N 145130–7100, compliance with this AD would make AD 2010–26–09 no longer valid for those Sikorsky helicopters.

**FAA's Determination**

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other products of this same type design.

**Related Service Information**

We reviewed Northrop Grumman LITEF GmbH Service Bulletin No. 145130–0017–845, Revision D, dated April 1, 2015 (SB 145130–0017–845). SB 145130–0017–845 specifies returning the applicable part numbered AHRS units to certain repair stations for modification. The modified AHRS units, which have new part numbers, have an additional watchdog circuit in the electronic board that eliminates frozen analog outputs and digital output interruptions.

**Proposed AD Requirements**

This proposed AD would require removing certain part-numbered LCR–100 AHRS units that use analog outputs for primary flight information display or autopilot functions without automatic output comparison from service. This proposed AD would also prohibit installing those LCR–100 AHRS units on any aircraft.

**Differences Between This Proposed AD and the EASA AD**

This proposed AD would only apply to certain part-numbered AHRS units that use analog outputs for primary flight information display or autopilot functions without automatic output comparison. The EASA AD applies to all of these part-numbered units regardless of the type of installation. The EASA AD requires inserting a temporary revision into the flight manual for analog without automatic output comparison installations until the AHRS unit is replaced with a modified unit. This proposed AD would not require temporarily revising the flight manual. The EASA AD requires replacing the AHRS units with particular part-numbered modified units, while this proposed AD would require removing the AHRS units from service instead.

**Costs of Compliance**

We estimate that this proposed AD would affect 50 aircraft of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour, and typical installations consist of two AHRS units. Replacing two AHRS units would take about 4 work-hours and $62,630 for required parts, for a total cost of $62,970 per aircraft and $3,148,500 for the U.S. fleet.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Northrop Grumman LITEF GmbH LCR–100 Attitude and Heading Reference System:** Docket No. FAA–2017–0522; Directorate Identifier 2015–SW–068–AD.

**(a) Applicability**

This AD applies to airplanes and helicopters, certificated in any category, with a Northrop Grumman LITEF GmbH LCR–100 Attitude and Heading Reference System (AHRS) unit part number (P/N) 145130–2000, 145130–2001, 145130–7000, 145130–7001, or 145130–7100 installed using analog outputs for primary flight information display or

autopilot functions without automatic output comparison. Aircraft known to have the subject AHRS units installed include but are not limited to the following:

(1) Dornier Luftfahrt GmbH Model 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes;

(2) Learjet Inc. Model 31A airplanes;

(3) Pilatus Aircraft Ltd. Model PC12, PC–12/45, and PC–12/47 airplanes;

(4) Polskie Zaklady Lotnicze Sp. z o.o. Model PZL M28 05 airplanes;

(5) Textron Aviation Inc. (type certificate previously held by Cessna Aircraft Company) Model 560XL airplanes;

(6) Bell Helicopter Textron Canada Limited Model 407 helicopters;

(7) Bell Helicopter Textron Inc. Model 412 and 412EP helicopters; and

(8) Sikorsky Aircraft Corporation Model S–76A, S–76–B, and S–76C helicopters.

**(b) Unsafe Condition**

This AD defines the unsafe condition as the AHRS unit's analog outputs of attitude and heading data freezing without detection or warning. This condition could result in misleading attitude and heading information, anomalous autopilot behavior, and loss of control of the aircraft.

**(c) Affected ADs**

This AD affects AD 2010–26–09, Amendment 39–16548 (75 FR 81424, December 28, 2010). Accomplishing a certain requirement of this AD terminates the requirements of AD 2010–26–09.

**(d) Comments Due Date**

We must receive comments by August 4, 2017.

**(e) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(f) Required Actions**

(1) Within 25 hours time-in-service (TIS), remove the AHRS unit from service.

(2) Removal from service of P/N 145130–7100 terminates the requirements of AD 2010–26–09 (75 FR 81424, December 28, 2010).

(3) Do not install an AHRS unit P/N 145130–2000, 145130–2001, 145130–7000, 145130–7001, or 145130–7100 on any aircraft.

**(g) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Nick Rediess, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7159; email *nicholas.rediess@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(h) Additional Information**

(1) Northrop Grumman LITEF GmbH Service Bulletin No. 145130–0017–845, Revision D, dated April 1, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Northrop Grumman LITEF GmbH, Customer Service—Commercial Avionics, Loerracher Str. 18, 79115 Freiburg, Germany; telephone +49 (761) 4901–142; fax +49 (761) 4901–773; email *ahrs.support@ng-litef.de.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0093, dated May 27, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* in the AD Docket.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 3420, Attitude and Directional Data System.

Issued in Fort Worth, Texas, on May 19, 2017.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2017–11132 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0526; Directorate Identifier 2017–NM–026–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by reports of cracking in the upper aft skin at the rear spar of the wings. This proposed AD would require repetitive inspections for cracking of the upper aft skin of the wings, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 20, 2017.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0526.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0526; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Payman Soltani, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the

**ADDRESSES** section. Include ''Docket No. FAA–2017–0526; Directorate Identifier 2017–NM–026–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We have received reports of cracking in the upper aft skin at the rear spar of the wings on Model 737–200, –200C, –300, –400, and –500 series airplanes. One operator found a crack originating from a fastener hole common to the upper aft skin and strap aft of the rear spar at wing buttock line (WBL) 187. The airplane had accumulated 49,461 flight hours and 47,718 flight cycles. A total of 73 cases of upper aft skin cracks were reported between 1993 and 2015; the cracks measured from 0.02 to 3.0 inches long. Cracks between WBL 159 and WBL 200 were found during open-hole high frequency eddy current (HFEC) inspections of a previous repair of the upper chord splice of the wing rear spar. The majority of larger cracks were found at WBL 171, 183, 187, and 200 at the end fasteners common to the straps attaching the wing trailing edge to the wing upper aft skin. This condition, if not corrected, could result in the inability of a principal structural element to sustain limit load, and consequent reduced structural integrity of the airplane.

**Explanation of Applicability**

Model 737–100, –200, and –200C series airplanes having line numbers 1 through 291 have a limit of validity (LOV) of 34,000 total flight cycles, and the actions proposed in this NPRM, as specified in Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017, would be required at a compliance time occurring after that LOV. Although operation of an airplane beyond its LOV is prohibited by 14 CFR 121.1115 and 129.115, this NPRM includes those airplanes in the applicability so that they are tracked in the event the LOV is extended in the future.

**Related Service Information Under 1 CFR Part 51**

We reviewed Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017. The service information describes procedures for repetitive surface HFEC, low frequency eddy current, and detailed inspections on airplanes with or without an external repair, for cracking of the upper aft skin from WBL 159 to WBL 220. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information described previously. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0526.

**Costs of Compliance**

We estimate that this proposed AD affects 471 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection | Up to 9 work-hours × $85 per hour = up to $765 per inspection cycle. | $0 | Up to $765 per inspection cycle. | Up to $360,315 per inspection cycle |

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**The Boeing Company:** Docket No. FAA–2017–0526; Directorate Identifier 2017–NM–026–AD.

**(a) Comments Due Date**

We must receive comments by July 20, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 57; Wings.

**(e) Unsafe Condition**

This AD was prompted by reports of cracking in the upper aft skin at the rear spar of the wings. We are issuing this AD to detect and correct cracks in the upper aft skin of the wings, which could result in the inability of a principle structural element to sustain limit load, and consequent reduced structural integrity of the airplane.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) For Group 1 Airplanes: Inspections**

For airplanes identified as Group 1 in Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017: Within 120 days after the effective date of this AD, do an inspection for cracking of the upper aft skin of the wings, using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

**(h) For Groups 2 and 3 Airplanes: Repetitive Inspections and Repair**

For Groups 2 and 3 airplanes identified in Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017: At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017, except as required by paragraph (i) of this AD, do the applicable inspection for cracking of the upper aft skin of the wings from wing buttock line (WBL) 159 to WBL 220, in accordance with the Work Instructions of Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017. If any cracking is found, repair before further flight, in accordance with the procedures specified in paragraph (j) of this AD. Repeat the inspection thereafter at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017.

**(i) Exceptions to the Service Information**

(1) Where Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017, specifies a compliance time ''after the original issue date of this service bulletin,'' paragraph (h) of this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Although Boeing Alert Service Bulletin 737–57A1329, dated January 16, 2017, specifies to contact Boeing for repair instructions, and specifies that action as ''RC'' (Required for Compliance), this AD requires repair in accordance with the procedures specified in paragraph (j) of this AD.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i)(2) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. If a step or substep is labeled ''RC Exempt,'' then the RC requirement is removed from that step or substep. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

**(k) Related Information**

(1) For more information about this AD, contact Payman Soltani, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5313; fax: 562–627–5210; email: *payman.soltani@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740; telephone 562–797–1717; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017–11257 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0528; Directorate Identifier 2017–NM–028–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–2B16 (CL–604 Variant) airplanes. This proposed AD was prompted by reports of in-service incidents regarding the loss of all air data system information provided to the flightcrew. This proposed AD would require revising the airplane flight manual to provide ''Unreliable Airspeed'' procedures to the flightcrew to stabilize the airplane's airspeed and attitude for continued safe flight and landing. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by July 20, 2017.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
• *Fax:* 202–493–2251.
• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0528; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2017–0528; Directorate Identifier 2017–NM–028–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2017–01, dated January 6, 2017 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B16 (CL–604 Variant) airplanes. The MCAI states:

> A number of in-service incidents have been reported on CL–600–2C10 aeroplanes regarding a loss of all air data information provided to the crew. The air data information was recovered as the aeroplane descended to lower altitudes. An investigation determined that the root cause in both events was high altitude icing (ice crystal contamination). If not recognized and addressed, this condition may affect continued safe flight and landing.
>
> Due to similarities in the air data systems, similar events could happen on Bombardier Inc. CL–600–2B16 aeroplanes.
>
> This [Canadian] AD mandates the incorporation of Aircraft Flight Manual (AFM) procedures to guide the crew to stabilize the aeroplanes airspeed and attitude for continued safe flight and landing.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0528.

**Related Service Information Under 1 CFR Part 51**

Bombardier, Inc., has issued Unreliable Airspeed, of Section 03–15, Instruments System, of Chapter 3, Emergency Procedures, to the following AFMs:

• Bombardier Challenger 604 AFM, PSP 604–1, Revision 103, dated November 28, 2016.
• Bombardier Challenger 605 AFM, PSP 605–1, Revision 41, dated November 28, 2016.
• Bombardier Challenger 650 AFM, PSP 650–1, Revision 6, dated November 28, 2016.

This service information provides revisions to the Emergency Procedures section of the AFM to incorporate a procedure for ''Unreliable Airspeed.'' These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Costs of Compliance**

We estimate that this proposed AD affects 128 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $10,880, or $85 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Bombardier, Inc.:** Docket No. FAA–2017–0528; Directorate Identifier 2017–NM–028–AD.

**(a) Comments Due Date**

We must receive comments by July 20, 2017.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model CL–600–2B16 (CL–604 Variant) airplanes, certificated in any category, serial numbers 5301 through 5665 inclusive; 5701 through 5988 inclusive; and 6050 through 6080 inclusive.

**(d) Subject**

Air Transport Association (ATA) of America Code 34, Navigation.

**(e) Reason**

This AD was prompted by reports of in-service incidents regarding the loss of all air data system information provided to the flightcrew. We are issuing this AD to provide the flightcrew with procedures for ''Unreliable Airspeed'' that stabilize the airplane's airspeed and attitude for continued safe flight and landing.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Revision of the Airplane Flight Manual (AFM)**

Within 30 days after the effective date of this AD: Revise the Emergency Procedures section of the AFM to include the information in Unreliable Airspeed, of Section 03–15, Instruments System, of Chapter 3, Emergency Procedures, of the applicable AFM specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. These revisions incorporate a procedure for ''Unreliable Airspeed.'' Thereafter, operate the airplane according to the limitation and procedure in the applicable revision.

(1) For airplanes having serial numbers 5301 through 5665 inclusive: Bombardier Challenger 604 AFM, PSP 604–1, Revision 103, dated November 28, 2016.

(2) For airplanes having serial numbers 5701 through 5988 inclusive (Marketing Designation—Challenger 605): Bombardier Challenger 605 AFM, PSP 605–1, Revision 41, dated November 28, 2016.

(3) For airplanes having serial numbers 6050 through 6080 inclusive (Marketing Designation—Challenger 650): Bombardier Challenger 650 AFM, PSP 650–1, Revision 6, dated November 28, 2016.

**(h) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the New York ACO, send it to: ATTN: the Program Manager, Continuing Operational Safety, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(i) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2017–01, dated January 6, 2017, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0528.

(2) For more information about this AD, contact Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on May 23, 2017.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2017–11256 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2017–0491; Directorate Identifier 2016–SW–020–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for Sikorsky Aircraft Corporation (Sikorsky) Model S–76A, S–76B, S–76C, and S–76D helicopters. This proposed AD would require inspecting the main rotor (M/R) servo pushrod (pushrod) assembly and applying slippage marks. This proposed AD is prompted by an accident of a Sikorsky Model S–76C helicopter caused by a failed pushrod assembly. The proposed actions are intended to prevent an unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by August 4, 2017.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0491; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**FOR FURTHER INFORMATION CONTACT:** Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email *blaine.williams@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

**Discussion**

We propose to adopt a new AD for Sikorsky Model S–76A, S–76B, S–76C, and S–76D helicopters with a serial number up to and including 761075 and with an M/R pushrod assembly part number (P/N) 76400–00034–059, 76400–00014–074, 76400–00014–076, or 76400–00014–077 installed. This proposed AD would not affect the requirements of AD 2015–19–51, which was issued as an emergency AD on September 14, 2015, and published in the **Federal Register** on October 26, 2015 (80 FR 65128). AD 2015–19–51 applies to Sikorsky Model S–76A, S–76B, S–76C, and S–76D helicopters with M/R pushrod assembly P/N 76400–00034–059 or tail rotor pushrod assembly P/N 76400–00014–071. AD 2015–19–51 requires inspecting the pushrod assemblies and jamnuts, and applying slippage marks across the pushrod tubes and jamnuts. This new proposed AD would apply to M/R pushrod assembly P/N 76400–00034–059 as well as M/R pushrod assemblies that are installed farther away from the servo actuators. Further flight testing has revealed additional data regarding the vibration environment of these M/R pushrod assemblies making it necessary to inspect the pushrod assemblies and jamnuts and apply torque to the jamnuts.

This proposed AD would require inspecting the M/R forward, aft, and lateral pushrod assembly control rods and jamnuts, applying torque to the jamnuts, and applying slippage marks across the control rods and jamnuts. This proposed AD is prompted by an accident of a Sikorsky Model S–76C helicopter caused by a loose jamnut and subsequent failure of the pushrod assembly. Separation of the control rod and the rod end was found. The proposed actions are intended to detect a loose jamnut and prevent failure of the pushrod assembly, loss of M/R flight control, and subsequent loss of control of the helicopter.

**FAA's Determination**

We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

**Related Service Information**

We reviewed Sikorksy S–76 Helicopter Alert Service Bulletin 76–67–58, Basic Issue, dated November 19, 2015 (ASB), which specifies a one-time inspection of the M/R forward, aft, and lateral pushrod assemblies and jamnuts for proper installation, condition, and security. If a pushrod or jamnut does not meet criteria specified in the inspections, the ASB specifies replacing the assembly. The ASB also specifies applying torque to each jamnut and applying two slippage marks across each control rod and jamnut.

**Proposed AD Requirements**

This proposed AD would require, within 300 hours time-in-service, inspecting each pushrod assembly by inspecting the position of the rod end in the control rod. If the lockwire passes through the inspection hole, this proposed AD would require replacing the pushrod assembly. If the lockwire does not pass through the inspection hole, this proposed AD would require inspecting the jamnut to determine seating position against the control rod and whether the jamnut can be turned with finger pressure. If the jamnut is not seated against the control rod or is loose, this proposed AD would require replacing the pushrod assembly. If the jamnut is seated against the control rod and cannot be turned with finger pressure, this proposed AD would require applying 140 inch-pounds of torque to the jamnut while using a pushrod tool. This proposed AD would also require, both for those pushrod assemblies that are replaced and for those that pass the inspections, applying two slippage marks across each control rod and jamnut.

**Differences Between This Proposed AD and the Service Information**

The Sikorsky ASB specifies returning any removed M/R pushrod assembly to Sikorsky. This proposed AD does not require returning any parts to Sikorsky.

**Costs of Compliance**

We estimate that this proposed AD would affect 198 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. Inspecting the M/R pushrod assemblies would take about 2.2 work-hours for an estimated cost of $187 per helicopter and $37,026 for the U.S. fleet. Replacing an M/R pushrod assembly would take about 2 work-hours for a labor cost of $170. Parts to replace M/R pushrod assembly P/N 76400–00034–059 would cost about

$2,411 for a total estimated replacement cost of $2,581.

Parts to replace M/R pushrod assembly P/N 76400–00014–074 would cost about $2,224 for a total estimated replacement cost of $2,394. Parts to replace M/R pushrod assembly P/N 76400–00014–076 would cost about $2,488 for a total estimated replacement cost of $2,658. Parts to replace M/R pushrod assembly P/N 76400–00014–077 would cost about $2,414 for a total estimated replacement cost of $2,584. It takes a minimal amount of time to apply the slippage marks for a negligible cost.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**Sikorsky Aircraft Corporation:** Docket No. FAA–2017–0491; Directorate Identifier 2016–SW–020–AD.

**(a) Applicability**

This AD applies to Model S–76A, S–76B, S–76C, and S–76D helicopters, serial numbers up to and including 761075, with a main rotor (M/R) servo pushrod (pushrod) assembly part number (P/N) 76400–00034–059, 76400–00014–074, 76400–00014–076, or 76400–00014–077 installed, certificated in any category.

Note 1 to paragraph (a) of this AD: M/R pushrod P/N 76400–00034–059 is included in the Applicability section of AD 2015–19–51, Amendment 39–18300 (80 FR 65128, October 26, 2015). This AD does not affect AD 2015–19–51.

**(b) Unsafe Condition**

This AD defines the unsafe condition as a loose jamnut. This condition could result in failure of a pushrod assembly, loss of M/R flight control, and subsequent loss of control of the helicopter.

**(c) Comments Due Date**

We must receive comments by August 4, 2017.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

Within 300 hours time-in-service:

(1) Inspect the control rod of each pushrod assembly (control rod) to determine whether 0.020 inch diameter lockwire can pass through the inspection hole.

(i) If the lockwire passes through the inspection hole, before further flight, replace the pushrod assembly.

(ii) If the lockwire does not pass through the inspection hole, inspect the jamnut to determine whether it is seated against the control rod and whether it can be turned with finger pressure.

(A) If the jamnut is not seated against the control rod or can be turned with finger pressure, before further flight, replace the pushrod assembly.

(B) If the jamnut is seated against the control rod and cannot be turned with finger pressure, using a pushrod tool, apply 140 inch-pounds of torque to the jamnut.

(2) Apply two slippage marks across each control rod and jamnut as follows:

(i) Clean the area where a slippage mark is to be applied.

(ii) Apply two slippage marks across the control rod and jamnut, parallel and on opposite sides of each other. Each slippage mark must extend at least 0.5 inch onto the control rod and must not cover the inspection hole. Figure 1 (Sheet 2) of Sikorsky S–76 Helicopter Alert Service Bulletin 76–67–58, Basic Issue, dated November 19, 2015, illustrates a slippage mark across a control rod and jamnut.

**(f) Alternative Methods of Compliance (AMOC)**

(1) The Manager, Boston Aircraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Blaine Williams, Aerospace Engineer, Boston Aircraft Certification Office, Engine & Propeller Directorate, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7161; email *blaine.williams@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(g) Additional Information**

Sikorksy S–76 Helicopter Alert Service Bulletin 76–67–58, Basic Issue, dated November 19, 2015, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Sikorsky Aircraft Corporation, Customer Service Engineering, 124 Quarry Road, Trumbull, CT 06611; telephone 1–800–Winged–S or 203–416–4299; email: *wcs_cust_service_eng.gr-sik@lmco.com.* You may review a copy of information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

**(h) Subject**

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

Issued in Fort Worth, Texas, on May 17, 2017.

**Scott A. Horn,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2017–11128 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

**[CPCLO Order No. 002–2017]**

### Privacy Act of 1974; Implementation

**AGENCY:** United States Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** Elsewhere in this **Federal Register**, the United States Department of Justice (Department or DOJ) has published a new Privacy Act System of Records Notice, JUSTICE/DOJ–018, ''DOJ Insider Threat Program Records.'' Further, the Department issued a rescindment notice for the Federal Bureau of Investigation (FBI) System of Records Notice titled, ''FBI Insider Threat Program Records,'' JUSTICE/FBI–023. In this document, the DOJ withdraws the notice of proposed rulemaking for the ''FBI Insider Threat Program Records'' issued in CPCLO Order No. 008–2016, published on September 19, 2016, and proposes to exempt JUSTICE/DOJ–018 from certain provisions of the Privacy Act, in order to avoid interference with efforts to detect, deter, and/or mitigate insider threats. Public comment is invited.

**DATES:** As of June 5, 2017, the notice of proposed rulemaking published at 81 FR 64092 (Sept. 19, 2016), is withdrawn. Comments on this notice of proposed rulemaking must be received by July 5, 2017.

**ADDRESSES:** Address all comments to the Privacy Analyst, Privacy and Civil Liberties Office, National Place Building, 1331 Pennsylvania Ave. NW., Suite 1000, Washington, DC 20530–0001, facsimile 202–307–0693, or email at *privacy@usdoj.gov.* To ensure proper handling, please reference the CPCLO Order No. of this notice of proposed rulemaking in your correspondence. You may review an electronic version of the proposed rule at *http://www.regulations.gov,* and you may also comment by using that Web site's comment form for this regulation. When submitting comments electronically, you must include the CPCLO Order No. in the subject box.

Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Daylight Time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at that time. Commenters in time zones other than Eastern Time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on or before the day the comment period closes.

*Posting of Public Comments:* Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the Department's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personally identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the Department's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** section, below.

**FOR FURTHER INFORMATION CONTACT:** Laurence Reed, DOJ Insider Threat Program Manager, United States Department of Justice, Insider Threat Prevention and Detection Program, 145 N Street NE., Washington, DC 20002, 202–357–0165, *itp@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:**

### DOJ Insider Threat Program

The November 21, 2012, Presidential Memorandum—*National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* states that an insider threat is the threat that any person with authorized access to any United States Government resources, to include personnel, facilities, information, equipment, networks or systems, will use her/his authorized access, wittingly or unwittingly, to do harm to the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities.

In the Notice section of this **Federal Register**, the DOJ has established a new Privacy Act system of records titled ''DOJ Insider Threat Program Records,'' JUSTICE/DOJ–018. The system serves as a repository for DOJ information and for information lawfully received from other federal agencies or obtained from private companies and permits the comparison of data sets in order to provide a more complete picture of potential insider threats.

In this rulemaking, the DOJ proposes to exempt this Privacy Act system of records from certain provisions of the Privacy Act in order to avoid interference with the responsibilities of the DOJ to detect, deter, and/or mitigate insider threats as established by federal law and policy. For an overview of the Privacy Act, see: *https://www.justice.gov/opcl/privacy-act-1974*.

### Integration of the FBI Insider Threat Program Records (ITPR) System of Records

On September 19, 2016, the Federal Bureau of Investigation (FBI), a component of the DOJ, published a new Privacy Act System of Records Notice titled, ''FBI Insider Threat Program Records (ITPR),'' JUSTICE/FBI–023, at 81 FR 64198. The FBI also issued a notice of proposed rulemaking, CPCLO No. 008–2016, at 81 FR 64092, proposing to exempt JUSTICE/FBI–023 from certain provisions of the Privacy Act. To consolidate Privacy Act notices under one DOJ-wide system of records, the Department is rescinding JUSTICE/FBI–023. In addition, the Department hereby withdraws the proposed rule, CPCLO No. 008–2016, published September 19, 2016, at 81 FR 64092, and will not publish a final rule to exempt JUSTICE/FBI–023 from certain provisions of the Privacy Act. Instead, the Department has published a new Privacy Act System of Records Notice titled, ''DOJ Insider Threat Program Records,'' JUSTICE/DOJ–018, and proposes to exempt this DOJ-wide

system of records from certain provisions of the Privacy Act, as described below.

**Regulatory Flexibility Act**

This proposed rule relates to individuals rather than small business entities. Pursuant to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, therefore, the proposed rule will not have a significant economic impact on a substantial number of small entities.

**Small Entity Inquiries**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.,* requires the DOJ to comply with small entity requests for information and advice about compliance with statutes and regulations within DOJ jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section, above. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/archive/sum_sbrefa.html*.

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires that DOJ consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new information collection requirements associated with this proposed rule. The records that are contributed to this system may be provided by individuals covered by this system, the DOJ and United States Government components, other domestic and foreign government entities, or purchased from private entities. Sharing of this information electronically will not increase the paperwork burden on the public.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 103–3, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule would not impose Federal mandates on any State, local, or tribal government or the private sector.

**List of Subjects in 28 CFR Part 16**

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, 28 CFR part 16 is proposed to be amended as follows:

## PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

## Subpart E—Exemption of Records Systems Under the Privacy Act

■ 2. Add § 16.137 to subpart E to read as follows:

**§ 16.137 Exemption of the Department of Justice Insider Threat Program Records, JUSTICE/DOJ–018.**

(a) The Department of Justice Insider Threat Program Records (JUSTICE/DOJ–018) system of records is exempted from subsections 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2) and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where DOJ determines compliance would not appear to interfere with or adversely affect the purpose of this system to detect, deter, and/or mitigate insider threats, the applicable exemption may be waived by the DOJ in its sole discretion.

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures of records concerning him/her would specifically reveal any insider threat-related interest in the individual by the DOJ or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and/or mitigate insider threats. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to impede the investigation, *e.g.,* destroy evidence or flee the area to avoid the investigation.

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting of disclosures provision of subsection (c)(3). The DOJ takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of DOJ records, it will share that information in appropriate cases.

(3) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), (e)(8), (f) and (g) because these provisions concern individual access to and amendment of law enforcement, intelligence and counterintelligence, and counterterrorism records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the interest of the DOJ and/or other law enforcement or intelligence agencies. Providing access could compromise information classified to protect national security; disclose information that would constitute an unwarranted invasion of another's personal privacy; reveal a sensitive investigative or intelligence technique; provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, or witnesses.

(4) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. The relevance and utility of certain information that may have a nexus to insider threats may not always be fully evident until and unless it is vetted and matched with other information necessarily and lawfully maintained by the DOJ.

(5) From subsection (e)(2) and (3) because application of these provisions could present a serious impediment to efforts to detect, deter and/or mitigate insider threats. Application of these provisions would put the subject of an investigation on notice of the investigation and allow the subject an opportunity to engage in conduct intended to impede the investigative activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the

record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the DOJ. Further, greater specificity of sources of properly classified records could compromise national security.

(7) From subsection (e)(5) because in the collection of information for authorized law enforcement and intelligence purposes, including efforts to detect, deter, and/or mitigate insider threats, due to the nature of investigations and intelligence collection, the DOJ often collects information that may not be immediately shown to be accurate, relevant, timely, and complete, although the DOJ takes reasonable steps to collect only the information necessary to support its mission and investigations. Additionally, the information may aid in establishing patterns of activity and providing criminal or intelligence leads. It could impede investigative progress if it were necessary to assure relevance, accuracy, timeliness and completeness of all information obtained throughout the course and within the scope of an investigation. Further, some of the records in this system may come from other domestic or foreign government entities, or private entities, and it would not be administratively feasible for the DOJ to vouch for the compliance of these agencies with this provision.

Dated: May 19, 2017.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

[FR Doc. 2017–10788 Filed 6–2–17; 8:45 am]

**BILLING CODE 4410–NW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

**[EPA–R08–OAR–2017–0171; FRL–9963–20–Region 8]**

### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; Negative Declarations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve negative declarations submitted by the states of Colorado, Montana, North Dakota, South Dakota, and Wyoming, which certify that no small municipal waste combustor (MWC) units subject to sections 111(d) and 129 of the Clean Air Act (CAA) exist in those states. Second, EPA proposes to approve renewed negative declarations submitted by the states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, which certify that no large MWC units subject to CAA sections 111(d) and 129 exist in those states. Third, EPA proposes to approve renewed negative declarations submitted by the states of Montana, South Dakota, Utah, and Wyoming, which certify that no commercial and industrial solid waste incineration (CISWI) units subject to CAA sections 111(d) and 129 exist in those states. Fourth, EPA proposes to approve negative declarations submitted by the states of Montana, North Dakota, South Dakota, Utah, and Wyoming, which certify that no other solid waste incineration (OSWI) units subject to CAA sections 111(d) and 129 exist in those states.

**DATES:** Written comments must be received on or before July 5, 2017.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R08–OAR–2017–0171 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Gregory Lohrke, Air Program, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6396, *lohrke.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is publishing a direct final rule without prior proposal to amend 40 CFR part 62 to reflect the States' submittals of the negative declarations. The EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the action is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, EPA contemplates no further action. If the EPA receives adverse comments, EPA will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule, and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule of the same title which is located in the ''Rules and Regulations'' section of this **Federal Register**.

**List of Subjects in 40 CFR Part 62**

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial industrial solid waste incineration, Intergovernmental relations, Municipal solid waste combustion, Other solid waste incineration, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 12, 2017.

**Suzanne J. Bohan,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2017–11575 Filed 6–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 387

**[Docket No. FMCSA–2014–0211]**

**RIN 2126–AB74**

### Financial Responsibility for Motor Carriers, Freight Forwarders, and Brokers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Advance notice of proposed rulemaking; withdrawal.

**SUMMARY:** FMCSA withdraws its November 28, 2014 advance notice of proposed rulemaking (ANPRM) concerning financial responsibility for motor carriers, freight forwarders, and brokers. FMCSA is authorized to establish minimum levels of financial responsibility for motor carriers at or above the minimum levels set by Congress. In the ANPRM, FMCSA sought public comment on whether to exercise its discretion to increase the minimum levels of financial responsibility, and, if so, to what levels. After reviewing all public comments to the ANPRM, FMCSA has determined that it has insufficient data or information to support moving forward with a rulemaking proposal, at this time.

**DATES:** As of June 5, 2017 the proposed published on November 28, 2014 at 79 FR 70839 is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Jeff Secrist, Chief, Registration, Licensing & Insurance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at 202–385–2367 or by email at *jeff.secrist@dot.gov.* If you have questions on viewing or submitting material to the docket, please contact Docket Services at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## ANPRM

On November 28, 2014, FMCSA published an ANPRM regarding Financial Responsibility for Motor Carriers, Brokers, and Freight Forwarders (79 FR 70839). In the ANPRM, the Agency announced that it was considering a rulemaking that would increase minimum levels of motor carrier financial responsibility for bodily injury or property damage [1] and sought information in connection with that potential rulemaking. In addition, the Agency asked several questions related to broker/freight forwarder financial responsibility as it continues to implement Section 32918 of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141) (MAP–21)(79 FR at 70842).[2] Finally, the Agency asked a series of questions in the ANPRM pertaining to (1) trip insurance for Mexican carriers, (2) the discretionary imposition of financial responsibility requirements for motor passenger carrier brokers pursuant to 49 U.S.C. 13904(f), and (3) its self-insurance program for motor carriers.

Regarding the core ANPRM issue of motor carrier financial responsibility limits, FMCSA sought public comment on whether to exercise its discretion to increase the minimum levels, and, if so, to what levels. Specifically, in the effort to gather relevant data, FMCSA posed a series of questions addressing the following matters:

- Premium Rates.
- Current Minimum Levels of Financial Responsibility.
- Impacts of Increasing the Minimum Level of Financial Responsibility.
- Compensation.
- Sources of Information.
- Timelines for implementation.

## Discussion of Comments

The Agency received 2,181 public comments in response to the ANPRM. Various stakeholders commented, including representatives of motor carriers, insurance companies, broker/freight forwarders, safety advocates, attorneys, drivers, and many others. Approximately 120 submissions, including one submission reflecting a petition signed by 11,366 individuals, expressed general support for increasing the minimum levels of financial responsibility for motor carriers without providing a substantive rationale for their opinion. Approximately 145 submissions expressed general opposition to increasing the minimum levels of financial responsibility for motor carriers without providing a substantive rationale for their opinions. The Agency appreciates the level of interest shown in the ANPRM and the efforts that stakeholders made to provide responsive information.

## FMCSA Decision

After considering whether to move forward with this rulemaking, the Agency has decided to withdraw the November 28, 2014 ANPRM because the Agency does not have sufficient data or information to support further rulemaking.

Despite receiving a significant number of comments in response to the ANPRM, commenters did not provide responsive information necessary to allow the Agency to proceed to a Notice of Proposed Rulemaking.[3] In particular, commenters did not provide sufficient cost or benefit data and the Agency was unable to otherwise obtain sufficient data on industry practice with respect to the level of liability limits in excess of the Agency's minimum financial responsibility requirements, the cost of such premiums and the frequency of, and the amount by which bodily injury and property damage claims exceed policy liability limits. The anecdotal and hypothetical data provided by commenters are not sufficient to allow the Agency to perform a systematic cost-benefit analysis that would be required to raise motor carrier minimum financial responsibility through a rulemaking. That is, based on the information provided, FMCSA is not able to determine (1) potential increases in insurance premiums associated with increased financial responsibility limits, or (2) or the impact of an increase in minimum financial responsibility requirements on insurance company capital requirements set by insurance regulators to ensure there are sufficient reserves to minimize the risk of insolvency and protect consumers. Moreover, FMCSA is not able to calculate economic benefits from having more financial resources available to assist crash victims associated with increased minimum financial responsibility limits.

Issued under the authority of delegation in 49 CFR 1.87 on: May 25, 2017.

**Daphne Y. Jefferson,**

*Deputy Administrator.*

[FR Doc. 2017–11544 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–EX–P**

[1] FMCSA's regulations (49 CFR part 387 Subparts A and B) require certain property and passenger motor carriers to maintain financial responsibility at the statutory minimums set forth in 49 U.S.C. 31138 and 31139.

[2] While FMCSA is withdrawing this ANPRM, the Agency continues its implementation of MAP–21 Section 32918 in a separate docket (FMCSA–2016–0102). On May 20, 2016, the Agency held a full-day informal roundtable discussion pertaining to broker/freight forwarder financial responsibility (81 FR 24935). The Agency received approximately 30 public comments in the meeting docket and is continuing to examine options for addressing the issues covered in that discussion.

[3] In a November 5, 2014 letter to the Acting Administrator of FMCSA, the Agency's Motor Carrier Safety Advisory Committee (MCSAC) provided recommendations to the Agency related to financial responsibility requirements. While MCSAC provided useful information, its task was not to develop cost and benefit information for use in a rulemaking proceeding.

# Notices

Federal Register
Vol. 82, No. 106
Monday, June 5, 2017

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### National Monitoring Plan for Native Bees: Stakeholder and Public Listening Session

**AGENCY:** National Institute of Food and Agriculture, Office of the Secretary, USDA.

**ACTION:** Notice of listening session and request for stakeholder input.

**SUMMARY:** On behalf of the U.S. Department of Agriculture's (USDA) Pollinator Health Working Group, USDA National Institute of Food and Agriculture (NIFA) will host a Listening Session to discuss a strategy to monitor native bees in the United States.

**DATES:** The session will occur on Wednesday, June 28, 2017 from 8:00 a.m. to 3:30 p.m. (EST). Regardless of attendance, anyone interested may submit written comments. Those comments are due to Andrew Clark at *Andrew.P.Clark@nifa.usda.gov* by July 6, 2017.

**ADDRESSES:** The meeting will take place at the USDA South Building Café Conference Center A–C located at 1400 Independence Avenue SW., Washington, DC 20250. All participants must report to the Independence Avenue and 12th Street entrance and must present a valid government-issued I.D. (*e.g.,* state driver's license or identification card) for admission.

*RSVP and Registration:* Individuals wishing to attend the event must RSVP no later than June 14, 2017 by emailing Andrew Clark at *Andrew.P.Clark@nifa.usda.gov.* In-person participation is limited to the first 100 individuals who register. Everyone is welcome to participate in the listening session by webinar. A few days before the event, NIFA's Web site will include details about the webinar at *https://nifa.usda.gov/resources?f%5B0%5D=field_resource_type%3A18.*

Onsite participants may provide a five-minute oral presentation addressing the following:

- Why is a national monitoring plan for native bees important;
- What kind of information/data is needed; and
- How would the information be used?

Registrants wishing to provide an oral presentation must provide a two to three sentence overview of the questions above. PowerPoint presentation are allowed but not required. If interested, please email your overview and PowerPoint to Andrew Clark at *Andrew.P.Clark@nifa.usda.gov* by 2:00 p.m., EST on June 23. Individuals scheduled to provide an oral presentation will receive notification of an assigned time by June 28. A written transcript of each presentation is required by July 6.

**FOR FURTHER INFORMATION CONTACT:** Andrew Clark, Program Specialist, NIFA at (202) 401–6550 or by email at *Andrew.P.Clark@nifa.usda.gov.*

**SUPPLEMENTARY INFORMATION:** *Background and Purpose:* Several species of animal pollinators in the United States have experienced significant population declines. The most economically important pollinators include managed bees (*e.g.,* European honey bee, bumble bees, alfalfa leafcutter bee, etc.) as well as wild native bees. Numerous biotic and abiotic causes are responsible for these declines. Frequently reported factors include:

- Invasive pests, parasites, and diseases;
- Increased exposure to pesticides, pollutants or toxins;
- Nutritional deficits;
- Extreme weather events;
- Agricultural intensification and habitat loss;
- Reduced genetic diversity; and
- Changes in pollinator or crop management practices.

The loss of both managed and wild bees would have severe impacts on crops that depend on pollinators, and would ultimately impact food security. This loss would also negatively impact natural ecosystem services dependent on pollinators.

In June 2014, a Presidential memorandum directed the formation of a National Pollinator Task Force chaired by the U.S. Secretary of Agriculture, and the Administrator of the U.S. Environmental Protection Agency (EPA). The Task Force released a Pollinator Research Action Plan in May 2015. The Plan included actions needed to assess native bee populations, including developing baseline data, assessing trends in pollinator populations, expanding bee identification capacities, and expanding collaboration between government and university scientists.

During 2015, Senators Barbara Boxer, Kristen Gillibrand, and Diane Feinstein asked the Government Accountability Office (GAO) to review USDA and EPA efforts to protect bee health.

In their 2016 report, a key GAO findings was,

> ''USDA has increased monitoring of honey bee colonies managed by beekeepers to better estimate losses nationwide but does not have a mechanism in place to coordinate the monitoring of wild, native bees.''

The GAO Report recommended that USDA coordinate with members of the Pollinator Task Force to develop a monitoring plan that would:

- Establish roles and responsibilities of lead and support agencies;
- Establish shared outcomes and goals; and
- Obtain input from relevant stakeholders, such as states.

A first step towards developing a national monitoring plan, the listening session will gather input from a diverse range of people who are interested in native bee diversity, abundance, and large scale national monitoring strategies.

*Prospectus:* The morning portion of the listening session will include brief introductions and opening remarks by USDA leaders and relevant federal agencies followed by five-minute oral presentations. Approximately 15 minutes of questions and discussion will follow every fifth presentation. After lunch, public presentations will continue, followed by closing remarks. The NIFA Web site (*www.nifa.usda.gov*) will include a link to a detailed schedule approximately a week before the listening session.

Done at Washington, DC, May 30, 2017.

**Sonny Ramaswamy,**

*Director, National Institute of Food and Agriculture.*

[FR Doc. 2017–11554 Filed 6–2–17; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Updated Information Concerning the Atlantic Coast Pipeline Project and Supply Header Project and the Associated Forest Service Land and Resource Management Plan Amendments

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; updating information.

**SUMMARY:** The USDA Forest Service (Forest Service) is participating as a cooperating agency with the Federal Energy Regulatory Commission (FERC) in the preparation of the Atlantic Coast Pipeline (ACP) and Supply Header Project Environmental Impact Statement (EIS). On January 6, 2017, the Forest Service published in the **Federal Register** (82 FR 1685) a Notice of Availability of the Atlantic Coast Pipeline and Supply Header Project Draft Environmental Impact Statement and the Draft of Amendments to the George Washington and Monongahela National Forests' Land and Resource Management Plans (LRMPs) to allow for the ACP to cross through these National Forests. Since that publication, the Forest Service determined there is a need to disclose the following: New information relating to the proposed LRMP amendments; a change in the Responsible Officials for the amendments; and the substantive provisions in the planning regulations that are likely to be directly related to the proposed amendments. In addition, a proposed change to one of the LRMP amendments will result in a change to the administrative review procedures as outlined in the January 6, 2017 **Federal Register** Notice.

**FOR FURTHER INFORMATION CONTACT:** Information about the ACP Project is available from the FERC's Office of External Affairs at 866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*). On the FERC's Web site, go to ''Documents & Filings,'' click on the ''eLibrary'' link, click on ''General Search'' and enter the docket number CP15–554. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov,* or toll free at 866–208–3676, or for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the FERC such as orders, notices, and rulemakings.

For information related specifically to the new information provided in this Notice, please contact Karen Overcash, Forest Planner, George Washington and Jefferson National Forests, at 540–265–5175 or *kovercash@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:**

#### Background

This Notice is specific to the Forest Service. The Atlantic Coast Pipeline route would cross 5.1 miles of lands managed by the Monongahela National Forest (MNF), in Pocahontas County, West Virginia and 15.9 miles of lands managed by the George Washington National Forest (GWNF), in Highland, Bath, and Augusta Counties, Virginia. The Supply Header Project would not affect the Monongahela or George Washington National Forests.

The FERC is the NEPA Lead Federal Agency for the environmental analysis of the construction and operation of the proposed ACP and Supply Header Project. The Forest Service is the Federal agency responsible for authorizing this use and issuing special use permits for natural gas pipelines across National Forest System (NFS) lands under its jurisdiction. As a condition of issuing a Special Use Permit (SUP) for ACP to construct, operate, maintain, and eventually decommission a natural gas transmission pipeline that crosses NFS lands, the Forest Service would include such terms and conditions deemed necessary to protect Federal property and otherwise protect the public interest.

The Forest Service intends to adopt FERC's EIS for its decision to authorize the construction and operation of ACP, along with the necessary project-specific amendments to the LRMPs, if the analysis provides sufficient evidence to support those decisions and the Forest Service is satisfied that its comments and suggestions have been addressed.

#### Planning Rule Requirements for LRMP Amendments

On December 15, 2016 the Department of Agriculture Under Secretary for Natural Resources and Environment issued a final rule that amended the 36 CFR 219 regulations pertaining to National Forest System Land Management Planning (the planning rule) (81 FR 90723, 90737). The amendment to the 219 planning rule clarified the Department's direction for amending LRMPs. The Department also added a requirement for amending a plan for the responsible official to provide notice ''about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment'' (36 CFR 219.13(b)(2), 81 FR at 90738). Whether a rule provision is directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment.

The following descriptions of the proposed or potential LRMP amendments that are anticipated to be addressed in the Final EIS include a description of the ''substantive requirements of §§ 219.8 through 219.11'' likely to be directly related to each amendment.

#### New Information for LRMP Amendments and Relationship to Substantive Requirements in the Planning Rule

The FERC's Draft EIS for the ACP and the Notice of Availability published in the **Federal Register** on January 6, 2017 included the consideration of a Forest Service authorization for construction and operation of the ACP across NFS lands and the associated Forest Service LRMP amendments that would be needed to make the project consistent with the respective LRMPs if the Forest Service were to approve the authorization (36 CFR 219.15).

The Draft EIS identified ''project-specific plan amendments'' that would be needed for the construction and operation of the ACP that otherwise could not, or potentially could not, meet certain standards in the MNF or GWNF LRMPs. These amendments are considered project-specific amendments because they would apply only to ACP and would not change LRMP requirements for other projects.

Since the Draft EIS, the Forest Service has reconsidered whether a project-specific amendment would still be necessary to ensure the ACP was consistent with some of the LRMP standards, has identified the need for a project-specific amendment with respect to several other LRMP standards, and has determined that a management prescription reallocation would not be necessary to approve the project.

#### Monongahela National Forest

The following potential amendment to the MNF LRMP would be a project-specific amendment, applicable only to the ACP Project. This amendment would not change the applicability of

LRMP requirements for other, future projects.

*Potential Amendment to the MNF LRMP:* The MNF LRMP may need to be amended to allow for the construction of the Atlantic Coast Pipeline to exceed two LRMP standards that were developed for the protection of soils, specifically Forestwide Standards SW06 and SW07 which are:

*Standard SW06:* Severe rutting resulting from management activities shall be confined to less than 5 percent of an activity area.

*Standard SW07:* Use of wheeled and/or tracked motorized equipment may be limited on soil types that include the following soil/site area conditions: (a) Steep Slopes (40 to 50 percent), (b) Very Steep Slopes (more than 50 percent), (c) Susceptible to Landslides, (d) Soils Commonly Wet at or near the Surface during a Considerable Part of the Year, or Soils Highly Susceptible to Compaction.

The amendment would provide an exception from these standards for the ACP Project and include specific mitigation measures and project design requirements for the project.

The 36 CFR 219 planning rule requirements likely to be directly related to this proposed amendment are:

§ 219.8(a)(2)(ii)—''[The plan must include plan components to maintain or restore] Soils and soil productivity, including guidance to reduce soil erosion and sedimentation,'' and

§ 219.10(a)(3)—''[The responsible official shall consider] Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.''

If this potential amendment is determined to be ''directly related'' to the substantive rule requirements, the Responsible Official must apply those requirements within the scope and scale of the amendment and, if necessary, make adjustments to the amendment to meet these rule requirements (36 CFR 219.13 (b)(5) and (6)).

**George Washington National Forest**

The following proposed amendment to the GWNF LRMP would be a project-specific amendment, applicable only to the ACP Project. This amendment would not change the applicability of LRMP requirements for other, future projects.

*Proposed Amendment, Part 1:* In the Draft EIS for the ACP and the January 6, 2017 **Federal Register** Notice of Availability, the original proposed amendment, part 1 was to amend the LRMP to reallocate 102.3 acres to Management Prescription 5C-Designated Utility Corridors from Management Prescriptions 7E1–Dispersed Recreation Areas (7 acres) and 13–Mosaics of Habitat (95 acres). Management Prescription 11-Riparian Corridors would have remained embedded within the new Management Prescription 5C area. The basis for this proposed amendment was from Forestwide Standards FW–243 and FW–244:

*Standard FW–243:* Develop and use existing corridors and sites to their greatest potential in order to reduce the need for additional commitment of lands for these uses. When feasible, expansion of existing corridors and sites is preferable to designating new sites.

*Standard FW–244:* Following evaluation of the above criteria, decisions for new authorizations outside of existing corridors and designated communication sites will include an amendment to the Forest Plan designating them as Management Prescription Area 5B or 5C.

This Management Prescription (Rx) allocation change would change management direction for any future activities within the designated Rx 5C corridor, and would not have been considered a project-specific amendment.

However, upon further examination, the Forest Service has determined it would be preferable to not reallocate the ACP operational corridor to a Management Prescription that would encourage future co-location opportunities. Instead the proposal is to now amend the LRMP with a project-specific amendment that would exempt the ACP Project from the requirements in Forestwide Standards FW–243 and FW–244. With this change, the 53.5 foot wide right-of-way needed for the ACP would remain within the existing management prescription areas (of Rx 4A—Appalachian National Scenic Trail Corridor, Rx 7E1—Dispersed Recreation Areas; Rx 11—Riparian Corridors; and Rx 13—Mosaics of Wildlife Habitat).

This change from a plan amendment affecting future management to a project-specific amendment would also change the administrative review process for this proposed amendment from the 36 CFR 219, Subpart B procedures as described in the January 6, 2017 **Federal Register** Notice of Availability, to the 36 CFR 218 administrative review process that applies to the other proposed project-specific amendments for this project.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(a)(3)—''[The responsible official shall consider] ''Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.''

*Proposed Amendment, Part 2:* The Forest Service proposes to amend Forestwide Standards FW–5, FW–8, FW–16, FW–17 and Management Area Prescription Standard 11–003 to allow for the construction of the Atlantic Coast Pipeline to exceed these soil and riparian corridor protection measures. Standards FW–8 and 11–003 were not originally identified in the Draft EIS for the ACP as standards that may need to be amended. These standards are:

*Standard FW–5:* On all soils dedicated to growing vegetation, the organic layers, topsoil and root mat will be left in place over at least 85% of the activity area and revegetation is accomplished within 5 years.

*Standard FW–8:* Water saturated soils in areas expected to produce biomass should not receive vehicle traffic or livestock trampling to prevent excessive soil compaction.

*Standard FW–16:* Management activities expose no more than 10% mineral soil in the channeled ephemeral zone.

*Standard FW–17:* In channeled ephemeral zones, up to 50% of the basal area may be removed down to a minimum basal area of 50 square feet per acre. Removal of additional basal area is allowed on a case-by-case basis when needed to benefit riparian dependent resources.

*Standard 11–003:* Management activities expose no more than 10 percent mineral soil within the project riparian corridor.

The amendment would provide an exception from these standards for the ACP Project and include specific mitigation measures and project design requirements for the project.

The 36 CFR 219 planning rule requirements likely to be directly related to amending the above standards are:

§ 219.8(a)(2)(ii)—''[The plan must include plan components to maintain or restore] Soils and soil productivity, including guidance to reduce soil erosion and sedimentation;''

§ 219.8(a)(2)(iv)—''[The plan must include plan components to maintain or restore] Water resources in the plan area, including lakes, streams, and wetlands; . . . and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability);'' and

§ 219.8(a)(3)(i)—The plan must include plan components ''to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity.''

The Draft EIS for the ACP and the January 6, 2017 **Federal Register** Notice of Availability had also identified that Forestwide Standard FW–15 and Management Prescription Area Standard 11–019 may need to be amended. However, a further review of these standards has determined that the proposed pipeline project can be made consistent with these standards and an amendment to these two standards will not be needed. These standards are:

*Standard FW–15:* Motorized vehicles are restricted in the channeled ephemeral zone to designated crossings. Motorized vehicles may only be allowed on a case by case basis, after site specific analysis, in the channeled ephemeral zone outside of designated crossings.

*Standard 11–019:* Tree removals from the core of the riparian corridor may only take place if needed to: Enhance the recovery of the diversity and complexity of vegetation native to the site; rehabilitate both natural and human-caused disturbances; provide habitat improvements for aquatic or riparian species, or threatened, endangered, sensitive, and locally rare species; reduce fuel buildup; provide for public safety; for approved facility construction/renovation; or as allowed in standards 11–015 or 11–024.

*Proposed Amendment, Part 3:* The GWNF LRMP would be amended to allow the Atlantic Coast Pipeline to be exempt from Management Prescription Area Standard 4A–025 and cross the Appalachian National Scenic Trail (ANST) in Augusta County, Virginia. This standard is:

*Standard 4A–025:* Locate new public utilities and rights-of-way in areas of this management prescription area where major impacts already exist. Limit linear utilities and rights-of-way to a single crossing of the prescription area, per project.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(b)(1)(vi)—''[The plan must include plan components to provide for] Appropriate management of other designated areas or recommended designated areas in the plan area.''

*Potential Amendment, Part 4:* The GWNF LRMP may need to be amended to allow removal of old growth trees within the construction zone of the Atlantic Coast Pipeline. The forestwide standard in the LRMP that may need to be amended is FW–85, which states that any stands identified as meeting the criteria for Dry Mesic Oak or Dry & Dry-Mesic Oak-Pine old growth forest communities may be suitable for timber harvest and any decision to harvest such stands would be made after consideration of their contribution to the distribution and abundance of these old growth forest community types. Stands identified as meeting the age criteria for any of the other old growth community types found on the forest would be unsuitable for timber production.

A determination on the need for this amendment will be made following completion of an old growth inventory of the stands within the ACP Project's construction zone.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment, if needed, is:

§ 219.11(c)—''The plan may include plan components to allow for timber harvest for purposes other than timber production . . . or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan . . .''

*Potential Amendment, Part 5:* The GWNF may need to amend Management Area Prescription Standard 2C3–015 to allow for a major reconstruction of a National Forest System Road within Management Prescription Area 2C3 for the purposes of providing access for pipeline construction. This standard is:

*Standard 2C3–015:* Allow road construction or reconstruction to improve recreational access, improve soil and water, to salvage timber, or to protect property or public safety.

This potential amendment is contingent on the final location of access roads needed for the pipeline.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment, if needed, is:

§ 219.10(b)(v)—''Protection of designated wild and scenic rivers as well as management of rivers found eligible or determined suitable for the National Wild and Scenic River system to protect the values that provide the basis for their suitability for inclusion in the system.''

*Potential Amendment, Part 6:* The GWNF may need to amend Forestwide Standard FW–182 to allow for the construction of the Atlantic Coast Pipeline to deviate from the Scenic Integrity Objectives (SIOs) established in the LRMP. This standard is:

*Standard FW–182:* The Forest SIOs are met for all new projects (including special uses). Existing conditions may not currently meet the assigned SIO.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(b)(i)—''[The plan must include plan components to provide for] ''Sustainable recreation; . . . and scenic character.''

If any of the six parts of the proposed amendment to the GWNF LRMP described above are determined to be ''directly related'' to a substantive rule requirement, the Responsible Official must apply that requirement within the scope and scale of the proposed amendment and, if necessary, make adjustments to the proposed amendment to meet the rule requirement (36 CFR 219.13(b)(5) and (6)).

**Administrative Review of Plan Amendment Decisions**

The Forest Service's January 6, 2017 Notice of Availability in the **Federal Register** indicated that following the issuance of FERC's Final EIS, the Forest Service would prepare separate records of decision for the authorization to construct and operate the ACP and for the plan amendment decisions. However, the Regional Foresters now intend to sign one record of decision for both the authorizations to construct and operate the pipeline on the MNF and GWNF and for the project-specific plan amendment decisions to the MNF LRMP and the GWNF LRMP. Two Regional Foresters are involved with the ACP Project since the pipeline will cross both the MNF, which is in the Eastern Region of the Forest Service, and the GWNF, which is in the Southern Region of the Forest Service. Doing so will simplify the decisionmaking process for internal Forest Service administrative purposes as well as for the public's right to participate in the predecisional review process. A Forest Service decision to authorize the construction and operation of the ACP will be subject to the Forest Service predecisional administrative review procedures established in 36 CFR 218. At the same time, project-specific amendments to the MNF and GWNF LRMPs will also be subject to the administrative review procedures under the 36 CFR 218 regulations (per 36 CFR 219.59(b)).

Since the Regional Foresters will be the Responsible Officials for both the decisions to authorize the construction and operation of the ACP as well as the LRMP amendments, the Reviewing Official for all of the decisions will be the National Forest System Associate Deputy Chief (36 CFR 218.3(a)).

*Responsible Officials for Forest Service Authorizations To Construct and Operate the Atlantic Coast Pipeline:* The Regional Forester Eastern Region for NFS lands on the MNF and the Regional Forester Southern Region for NFS lands on the GWNF are the Responsible Officials. (Note that Forest Service Manual 2704.32 provides that the Regional Forester has authority to issue special use authorizations for pipelines 24 inches or more in diameter, and may not delegate that authority to a lower-level official.)

*Responsible Officials for Forest Service LRMP Amendments:* The January 6, 2017 **Federal Register** Notice of Availability had identified the Forest Supervisor for the Monongahela National Forest and the Forest Supervisor for the George Washington and Jefferson National Forests as the

Responsible Officials for the MNF LRMP Amendment and the GWNF LRMP Amendment, respectively. However, since the Regional Foresters for the Eastern and Southern Region will be the Responsible Officials for the decision to authorize the construction and operation of ACP, in the interest of administrative efficiencies as well as to simplify the administrative review process for the public, the Responsible Officials for the LRMP Amendments will now be the Regional Forester Eastern Region for the MNF LRMP Amendment and the Regional Forester Southern Region for the GWNF LRMP Amendment.

Dated: May 10, 2017.

**Robert M. Harper,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017–11484 Filed 6–2–17; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Payette and Boise National Forests; Valley County, Idaho; Stibnite Gold Project Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Payette National Forest (PNF) is preparing an Environmental Impact Statement (EIS) to evaluate and disclose the potential environmental effects from: (1) Approval of the ''Stibnite Gold Project Plan of Restoration and Operations'' (Plan) submitted by Midas Gold Idaho, Inc. (Midas Gold) in September 2016, to occupy and use National Forest System (NFS) lands for operations associated with open-pit mining and ore processing; and (2) related amendments to the Payette National Forest Land and Resource Management Plan (Payette Forest Plan, 2003) and/or the Boise National Forest Land and Resource Management Plan (Boise Forest Plan, as amended in 2010).

The United States Army Corps of Engineers (USACE) will cooperate on the preparation of the EIS and evaluate its content to ensure that the EIS can be adopted by the USACE to support an eventual decision to either issue, issue with conditions, or deny a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) for the Plan. The United States Environmental Protection Agency (EPA) will cooperate on the preparation of the EIS and evaluate its content to ensure that the EIS can be adopted in support of the decision-making process for issuance of a National Pollutant Discharge Elimination System (NPDES) Permit under Section 402 of the CWA.

**DATES:** Comments concerning the scope of the analysis must be received by July 20, 2017.

**ADDRESSES:** Webform submission of comments is encouraged. Comments can be submitted via the project Web page at *http://www.fs.usda.gov/goto/payette/StibniteGold* by selecting the ''Comment on Project'' link on the right side of the page. Written comments may also be sent to Payette National Forest, ATTN: Forest Supervisor Keith Lannom—Stibnite Gold EIS, 500 N. Mission St., McCall, Idaho 83638. Comments may also be sent via email with a subject line reading ''Stibnite Gold EIS Scoping Comment'' to *comments-intermtn-payette@fs.fed.us* or via facsimile (FAX) to 1–208–634–0744. Additional information regarding submittal of comments is provided below in the Scoping Process section. Written comments may also be submitted during public scoping meetings that will be held by the U.S. Forest Service (Forest Service), as follows:

1. June 27, 2017, 5:00–7:00 p.m., Ashley Inn, Cascade, Idaho
2. June 28, 2017, 5:00–7:00 p.m., Payette Forest Supervisor's Office, McCall, Idaho
3. June 29, 2017, 1:00–3:00 and 5:00–7:00 p.m., Holiday Inn Express and Suites (Airport), Boise, Idaho

**FOR FURTHER INFORMATION CONTACT:** Brian Harris, Public Affairs Officer, at 1–208–634–0784 or *bdharris@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The Stibnite Gold Project (Project) is located in both the PNF and BNF. The PNF will be the lead unit for processing and administering the Plan on NFS lands.

#### Purpose and Need for Action

The purpose of the Forest Service's action is to provide for approval of the Plan, which would govern occupancy and use of NFS lands for operations that are reasonably incident to mining. To provide for such approval, the Responsible Official needs to determine whether reasonable changes or additions to the Plan are necessary in order to meet the requirements of regulations set forth in 36 CFR 228 Subpart A and other applicable laws, regulations, or policies, prior to approval.

Midas Gold submitted a plan of operations for mining on NFS lands, titled ''Stibnite Gold Plan of Restoration and Operations'' (Plan) to the Forest Service in September 2016, in accordance with Forest Service regulations for locatable minerals set forth at 36 Code of Federal Regulations (CFR) 228 Subpart A. In order to comply with its statutory and regulatory obligations to respond to the Plan submitted by Midas Gold Idaho, Inc. (Midas Gold), the Forest Service must: (1) Evaluate the Plan; (2) consider requirements set forth at 36 CFR 228.8, including those to minimize adverse effects to the extent feasible, comply with applicable laws, regulations, and standards for environmental protection, and provide for reclamation; and (3) respond to the Plan as set forth at 36 CFR 228.5(a). The Responsible Official determined the Plan to be administratively complete in December 2016. Approval of the Plan and issuance of permits under the CWA would be major federal actions subject to the National Environmental Policy Act (NEPA). Accordingly, the federal land management and regulatory agencies must also prepare an EIS to consider and publicly disclose the potential environmental effects of the proposed action.

#### Proposed Action

The Responsible Official proposes to approve the Plan submitted by Midas Gold, with any modifications determined necessary through the analysis to comply with applicable laws and regulations. USACE would review the Plan and EIS for purposes of evaluating Midas Gold's application for a Department of the Army Permit under Section 404 of the CWA. EPA would review the Plan and EIS for purposes of evaluating Midas Gold's application for a related NPDES Permit under Section 402 of the CWA. As described in the Plan, the Project would affect federal, state, and private lands. The proposed action by the Forest Service would only authorize approval of mining-related operations on NFS lands, because the Forest Service does not have jurisdiction to regulate mining operations that occur on private or state land. However, the EIS will consider and disclose environmental effects of mining-related operations that would occur on private and state lands. Connected actions related to the Plan, including but not necessarily limited to CWA permitting by USACE and EPA and related amendments of the Payette and Boise Forest Plans, will be

considered. Impacts of past, present, ongoing, and reasonably foreseeable future actions in the Project area will be considered in combination with the impacts of the Project to estimate the potential cumulative impacts of Project implementation.

*Project Location*

The Project area is located in the upper East Fork of the South Fork of the Salmon River (EFSFSR) drainage, approximately 44 air miles northeast of the City of Cascade and three miles east of the Frank Church-River of No Return Wilderness in Valley County, Idaho. Operations would impact approximately 500 acres of patented mining claims owned or controlled by Midas Gold and approximately 1,500 acres of federal public lands comprised of adjacent NFS lands administered by the PNF and two supporting-infrastructure corridors located primarily in the BNF. Parts of the Project area, such as the Stibnite mine site, have been impacted by historic mining and ore processing operations. Some of these impacts have been remediated, but legacy mining impacts remain.

*Project Description*

Midas Gold's stated objective is to economically develop and operate a modern mine, while providing environmental restoration of impacts related to historic mining activities at the site and socioeconomic benefits in surrounding areas. Midas Gold's Plan includes descriptions of the following operations and activities to be conducted on a mixture of NFS, State, and private lands:

- Redevelopment and Construction (2 to 3 years): Developing supporting infrastructure, including upgraded and reconstructed powerline, communication sites, upgraded and/or new roads (including a long-term, temporary mine access and public by-pass route), maintenance facility, and onsite housing, oxygen plant, and water management infrastructure; relocation and reuse of spent ore and construction of a lined tailings storage facility; modifying stream channel to reduce sedimentation and restore wetland function and fish passage (including temporarily rerouting the East Fork of the South Fork of the Salmon River [EFSFSR] through a fish-passable tunnel); planting burned areas; initial mining of one open pit (which will require closure of the Stibnite road through the mine site); and constructing development rock storage and temporary ore stockpile facilities, crusher, and ore processing facilities.
- Mining and Ore Processing (12 to 15 years): Resuming mining from two historical and one new open pit at a rate of approximately 40,000 to 100,000 tons of material per day; processing up to 25,000 tons per day of ore to recover gold/silver dorè and antimony concentrate; historical tailings reprocessing and clean-up; placing neutralized new and reprocessed tailings in the tailings storage facility; placing development rock in four engineered facilities, backfilling Yellow Pine pit; and concurrent reconstruction of stream channels, riparian areas, wetlands, and upland habitat, including restoring the EFSFSR to its approximate original gradient across the backfilled Yellow Pine pit.
- Initial Closure and Reclamation (2 to 3 years): Removing structures and facilities; decommissioning temporary roads; recontouring and drainage; additional wetland mitigations; reconstructing the Stibnite Road and various stream channels in the project area; and growth media placement and revegetation.
- Post-Closure and Monitoring (5 to 7 years): Establishing a wetland on top of the tailings storage facility; reclaiming rock storage facilities; monitoring reclamation and remediation projects.

The Plan includes operational standards and practices to minimize, mitigate or eliminate the potential for negative impacts and environmental monitoring to document compliance and to facilitate adaptive management through the redevelopment, mining, reclamation, and post-closure periods.

An initial review of the consistency of the Plan with both the Payette and Boise Forest Plans indicates that approval of the Plan as submitted would result in conditions that are inconsistent with the forest plans. Amendments to the forest plans may be required to address inconsistencies with Forest Plan standards including standards for recreation, roadless areas, vegetation, visual quality, and wildlife.

**Possible Alternatives**

The EIS will disclose the effects of the no-action alternative, which, while not within the Responsible Official's discretion, would provide a baseline against which action alternatives can be compared, and the proposed action, approval of Midas Gold's Plan. Additional alternatives and Project design features may be evaluated in the EIS. Alternatives and design features determined reasonable and necessary to meet Forest Service regulations for locatable minerals set forth at 36 CFR 228 Subpart A may require changes and/or additions to the Plan. Further information regarding the nature of the decision(s) to be made is presented in the following section.

**Lead and Cooperating Agencies**

The Forest Service will be the lead agency preparing the EIS. Currently, five Cooperating agencies have been identified, they are:

—U.S. Environmental Protection Agency (EPA)
—U.S. Army Corps of Engineers (USACE)
—Idaho Department of Lands
—Idaho Department of Environmental Quality
—Governor's Office of Energy and Mineral Resources

Other agencies or governmental entities may join as cooperators during the process.

**Responsible Official**

The Forest Supervisor of the PNF has been delegated authority for decisions related to the Plan on the BNF and will be the Responsible Official who prepares the record of decision (ROD) necessary to approve the portions of the Plan on NFS lands. USACE and EPA will prepare final decisions for their respective permitting action(s).

**Nature of Decision To Be Made**

The Responsible Official will consider the beneficial and adverse impacts of each alternative. With respect to the portions of the Plan on NFS lands, the Forest Service Responsible Official has discretion to determine whether changes in, or additions to, the Plan will be required prior to approval. However, the Responsible Official cannot categorically prohibit operations that are reasonably incident to mining of locatable minerals on NFS lands in the area of the proposed Plan.

Using the analysis in the EIS and supporting documentation, the Forest Service Responsible Official will make the following decisions regarding the Plan:

1. Decide whether to approve the Plan as submitted by Midas Gold, or to require changes or additions to the Plan to meet the requirements for environmental protection and reclamation set forth at 36 CFR 228 Subpart A before approving a final Plan. The Forest Service decision may be to approve a plan of operations composed of elements from one or more of the alternatives considered. The alternative that is selected for approval in the final Plan must minimize adverse impacts on NFS surface resources to the extent feasible.

2. Decide whether to approve amendments to the forest plans, if

required in order to approve the final Plan.

3. Decide whether and/or how to mitigate the effects of the proposed mining operation to existing public motorized access.

*Final EIS and Record of Decision*

The Forest Service would release a draft ROD in conjunction with the final EIS. The draft ROD would address approval of the Plan, and any related project-specific Forest Plan or Travel Plan amendments that may be required. The draft decision would be subject to 36 CFR 218, ''Project-Level Predecisional Administrative Review Process.'' Depending on the nature of the forest plan amendments required, the draft decisions may also be subject to 36 CFR 219 Subpart B, ''Predecisional Administrative Review Process.''

Following resolution of objections to the draft ROD, a final ROD would be issued. As the operator, Midas Gold would have an opportunity to appeal the decision as set forth at 36 CFR 214, ''Postdecisional Administrative Review Process for Occupancy and Use of National Forest System Lands and Resources.''

Prior to approval of the Plan, Midas Gold may be required to modify the September 2016 Plan to comply with the description of the selected alternative in the final ROD. In addition, the PNF Forest Supervisor would require Midas Gold to submit a reclamation bond or provide proof of other acceptable financial assurance to ensure that NFS lands and resources involved with the mining operation are reclaimed in accordance with the approved Plan and Forest Service requirements for environmental protection (36 CFR 228.8 and 228.13). After the Forest Service has determined that the Plan conforms to the ROD as well as other regulatory requirements, including acceptance of financial assurance for reclamation, it would approve the Plan. Implementation of mining operations that affect NFS lands and resources may not commence until the reclamation bond or other financial assurance is in place and a plan of operations is approved.

**Preliminary Issues**

Issues to be analyzed in the EIS will be developed during this scoping process. Preliminary issues expected to be analyzed include potential impacts to: Access and transportation; aesthetics and visual resources; botanical resources, including wetlands and threatened, endangered, proposed, and sensitive species; climate and air quality; cultural and heritage resources; environmental justice; federal land management and environmental protection; fire and fuels management; fisheries and wildlife, including threatened, endangered, proposed, and sensitive species; geochemistry; geology; hazardous materials; land use; long-term, post-closure site management; noise; public health and safety; recreation; roadless and wilderness resources; socioeconomics; soils and reclamation cover materials; timber resources; water resources (groundwater and surface water); and water rights.

**Permits or Licenses Required**

Aspects of the Plan will also require other permitting, including by the Idaho Departments of Lands, Environmental Quality, and Water Resources.

**Scoping Process**

This notice of intent initiates the scoping (public involvement) process, which guides the development of the EIS. Public comments may be submitted to the PNF in a variety of ways, including: via email, via the project Web site, by mail, and via FAX. In addition, the PNF will conduct scoping meetings, during which members of the public can learn about the Forest Service proposed action and the NEPA process and submit written comments. Comments sought by the PNF include comments specific to the proposed action, information that could be pertinent to analysis of environmental effects, identification of significant issues, and identification of potential alternatives.

Written comments may be sent to: Payette National Forest, ATTN: Forest Supervisor Keith Lannom—Stibnite Gold EIS, 500 N. Mission St., McCall, ID 83638. Comments may also be sent via email with a Subject Line reading ''Stibnite Gold EIS Scoping Comment'' to *comments-intermtn-payette@fs.fed.us,* submitted via Web site at *http://www.fs.usda.gov/goto/payette/StibniteGold,* or sent via FAX to 1–208–634–0744.

It is important that reviewers provide their comments at such times and in such manner that they are useful to preparation of the EIS. Therefore, to be most useful, comments should be provided prior to the close of the scoping comment period and should clearly articulate the reviewer's concerns and contentions.

Comments submitted anonymously will be accepted and considered; however, without an associated name and address, receiving further correspondences concerning the proposed action will not be possible and those individuals will not have standing for objection.

Dated: May 12, 2017.

**Robert M. Harper,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017–11483 Filed 6–2–17; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Notice of Updated Information Concerning the Mountain Valley Pipeline Project and Equitrans Expansion Project and the Associated Forest Service Land and Resource Management Plan Amendments

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; updating information.

**SUMMARY:** The USDA Forest Service (Forest Service) is participating as a cooperating agency with the Federal Energy Regulatory Commission (FERC) and the Bureau of Land Management (BLM) in the preparation of the Mountain Valley Pipeline Project (MVP) and Equitrans Expansion Project (EEP) Environmental Impact Statement (EIS). On October 14, 2016, the Forest Service published in the **Federal Register** (81 FR 71041) a Notice of Availability of the Mountain Valley Pipeline Project and Equitrans Expansion Project Draft Environmental Impact Statement and the Draft of Amendments to the Jefferson National Forest's Land and Resource Management Plan (LRMP) to allow for the MVP to cross through the Jefferson National Forest. Since that publication, the Forest Service determined there is a need to disclose the following: New information relating to the proposed LRMP amendments and the substantive provisions in the 2012 Planning Rule that are likely to be directly related to the proposed amendments. In addition, a proposed change to one of the LRMP amendments will result in a change to the administrative review procedures as outlined in the October 14, 2016 **Federal Register** Notice.

**FOR FURTHER INFORMATION CONTACT:** Information about the MVP Project is available from the FERC's Office of External Affairs at 866–208–FERC (3372), or on the FERC Web site (*www.ferc.gov*). On the FERC's Web site, go to ''Documents & Filings,'' click on the ''eLibrary'' link, click on ''General Search'' and enter the docket number CP16–10. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at

*FercOnlineSupport@ferc.gov,* or toll free at 866–208–3676, or for TTY, contact 202–502–8659. The eLibrary link also provides access to the texts of formal documents issued by the FERC such as orders, notices, and rulemakings.

For information related specifically to the new information provided in this Notice, please contact Karen Overcash, Forest Planner, George Washington and Jefferson National Forests at 540–265–5175 or *kovercash@fs.fed.us.*

**SUPPLEMENTARY INFORMATION:**

**Background**

This Notice is specific to the Forest Service. The Mountain Valley Pipeline route would cross about 3.4 miles of lands managed by the Jefferson National Forest (JNF), in Monroe County, West Virginia and Giles and Montgomery Counties, Virginia. The Equitrans Expansion Project would not cross the Jefferson National Forest.

The FERC is the NEPA Lead Federal Agency for the environmental analysis of the construction and operation of the proposed MVP and Equitrans Expansion Project. Under the Mineral Leasing Act (30 U.S.C. 185 *et seq.*), the BLM is the Federal agency responsible for issuing right-of-way grants for natural gas pipelines across Federal lands under the jurisdiction of two or more Federal agencies. The BLM is therefore, considering the issuance of a right-of-way grant to Mountain Valley for pipeline construction and operation across the lands under the jurisdiction of the Forest Service and the US Army Corps of Engineers (USACE). Before issuing the right-of-way grant, the BLM would need to acquire the written concurrences of the Forest Service and the USACE. Through this concurrence process, the Forest Service would submit to the BLM any stipulations for inclusion in the right-of-way grant that are deemed necessary to protect Federal property and otherwise protect the public interest.

The FERC's Draft EIS for the MVP Project included the consideration of a BLM right-of-way grant across Federal lands, along with the associated proposed Forest Service LRMP amendments. The BLM and Forest Service can adopt FERC's EIS for agency decisions, including the necessary amendments to the LRMP, if the analysis provides sufficient evidence to support those decisions and the Forest Service is satisfied that its comments and suggestions have been addressed.

**Planning Rule Requirements for LRMP Amendments**

On December 15, 2016 the Department of Agriculture Under Secretary for Natural Resources and Environment issued a final rule that amended the 36 CFR 219 regulations pertaining to National Forest System Land Management Planning (the planning rule) (81 FR 90723, 90737). The amendment to the 219 planning rule clarified the Department's direction for amending LRMPs. The Department also added a requirement for amending a plan for the responsible official to provide notice ''about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment'' (36 CFR 219.13(b)(2), 81 FR at 90738). Whether a rule provision is directly related to an amendment is determined by any one of the following: The purpose for the amendment, a beneficial effect of the amendment, a substantial adverse effect of the amendment, or a lessening of plan protections by the amendment.

The following descriptions of the proposed amendments to the JNF's LRMP that are anticipated to be addressed in the Final EIS include a description of the ''substantive requirements of §§ 219.8 through 219.11'' likely to be directly related to each amendment.

**New Information for LRMP Amendments and Relationship To Substantive Requirements in the Planning Rule**

The FERC's Draft EIS for the MVP and the Notice of Availability published in the **Federal Register** on October 14, 2016 included the consideration of Forest Service LRMP amendments that would be needed to make the proposed pipeline construction and operation consistent with the JNF LRMP (36 CFR 219.15). These amendments would need to be approved before the Forest Service could issue a letter of concurrence to the BLM.

The Draft EIS identified project-specific plan amendments that would be needed for the construction and operation of the MVP that otherwise could not, or potentially could not, meet certain standards in the JNF LRMP. These amendments are considered project-specific amendments because they would apply only to MVP and would not change LRMP requirements for other projects.

Since the Draft EIS, the Forest Service has reconsidered whether a project-specific amendment would still be necessary to ensure the MVP was consistent with some of the LRMP standards, has identified the need for a project-specific amendment with respect to several other LRMP standards, and has determined that a management prescription reallocation would not be necessary to approve the project.

**Jefferson National Forest**

The following proposed amendment to the JNF LRMP would be a project-specific amendment, applicable only to the MVP Project. This amendment would not change the applicability of LRMP requirements for other, future projects.

*Proposed Amendment, Part 1:* In the Draft EIS for the MVP and the October 14, 2016 **Federal Register** Notice of Availability, the original proposed amendment, part 1 was to amend the LRMP to reallocate 186 acres to Management Prescription 5C—Designated Utility Corridors from Management Prescriptions 4J—Urban/Suburban Interface (56 acres), 6C—Old Growth Forest Communities Associated with Disturbance (19 acres) and 8A1—Mix of Successional Habitats in Forested Landscapes (111 acres). Management Prescription 11—Riparian Corridors would have remained embedded within the new Management Prescription 5C area. The basis for this proposed amendment was from Forestwide Standards FW–247 and FW–248:

> *Standard FW–247:* Develop and use existing corridors and sites to their greatest potential in order to reduce the need for additional commitment of lands for these uses. When feasible, expansion of existing corridors and sites is preferable to designating new sites.
>
> *Standard FW–248:* Following evaluation of the above criteria, decisions for new authorizations outside of existing corridors and designated communication sites will include an amendment to the Forest Plan designating them as Prescription Area 5B or 5C.

This Management Prescription (Rx) allocation change would change management direction for any future activities within the designated Rx 5C corridor, and would not have been considered a project-specific amendment.

However, upon further examination, the Forest Service has determined it would be preferable to not reallocate the MVP corridor to a Management Prescription 5C Utility Corridor that would be 500 feet wide and would encourage future co-location opportunities. Instead the proposal is to now amend the LRMP with a project-specific amendment that would exempt the MVP Project from the requirements in Forestwide Standards FW–247 and FW–248. With this change, the 50 foot wide right-of-way needed for the MVP would remain within the existing management prescription areas (of Rx

4A—Appalachian National Scenic Trail Corridor, Rx 4J—Urban/Suburban Interface, Rx 6C—Old Growth Forest Communities Associated with Disturbance; Rx 8A1—Mix of Successional Habitats in Forested Landscapes; and Rx 11—Riparian Corridors).

This change from a plan amendment affecting future management to a project-specific amendment would also change the administrative review process for this proposed amendment from the 36 CFR 219, Subpart B procedures as described in the October 14, 2016 **Federal Register** Notice of Availability, to the 36 CFR 218 administrative review process that applies to the other proposed project-specific amendments for this project.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(a)(3)—''[The responsible official shall consider] ''Appropriate placement and sustainable management of infrastructure, such as recreational facilities and transportation and utility corridors.''

*Proposed Amendment, Part 2:* The Forest Service proposes to amend Forestwide Standards FW–5, FW–8, FW–9, FW–13, FW–14 and Management Prescription Area Standard 11–003 to allow for the construction of the Mountain Valley Pipeline to exceed these soil and riparian corridor protection measures. Standards FW–8 and 11–003 were not originally identified in the Draft EIS for the MVP as standards that may need to be amended. These standards are:

*Standard FW–5:* On all soils dedicated to growing vegetation, the organic layers, topsoil and root mat will be left in place over at least 85% of the activity area and revegetation is accomplished within 5 years.

*Standard FW–8:* To limit soil compaction, no heavy equipment is used on plastic soils when the water table is within 12 inches of the surface, or when soil moisture exceeds the plastic limit. Soil moisture exceeds the plastic limit when soil can be rolled to pencil size without breaking or crumbling.

*Standard FW–9:* Heavy equipment is operated so that soil indentations, ruts, or furrows are aligned on the contour and the slope of such indentations is 5 percent or less.

*Standard FW–13:* Management activities expose no more than 10% mineral soil in the channeled ephemeral zone.

*Standard FW–14:* In channeled ephemeral zones, up to 50% of the basal area may be removed down to a minimum basal area of 50 square feet per acre. Removal of additional basal area is allowed on a case-by-case basis when needed to benefit riparian dependent resources.

*Standard 11–003:* Management activities expose no more than 10 percent mineral soil within the project area riparian corridor.

The amendment would provide an exception from these standards for the MVP Project and include specific mitigation measures and project design requirements for the project.

The 36 CFR 219 planning rule requirements likely to be directly related to amending the above standards are:

§ 219.8(a)(2)(ii)—''[The plan must include plan components to maintain or restore] Soils and soil productivity, including guidance to reduce soil erosion and sedimentation;''

§ 219.8(a)(2)(iv)—''[The plan must include plan components to maintain or restore] Water resources in the plan area, including lakes, streams, and wetlands; . . . and other sources of drinking water (including guidance to prevent or mitigate detrimental changes in quantity, quality, and availability);'' and

§ 219.8(a)(3)(i)—The plan must include plan components ''to maintain or restore the ecological integrity of riparian areas in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity.''

The Draft EIS for the MVP and the October 14, 2016 **Federal Register** Notice of Availability had also identified that Management Prescription Area Standard 11–017 may need to be amended. However, a further review of this standard has determined that the proposed pipeline project can be made consistent with this standard and an amendment to this standard will not be needed. This standard is:

*Standard 11–017:* Tree removals from the core of the riparian corridor may only take place if needed to: Enhance the recovery of the diversity and complexity of vegetation native to the site; rehabilitate both natural and human-caused disturbances; provide habitat improvements for aquatic or riparian species, or threatened, endangered, sensitive, and locally rare species; reduce fuel buildup; provide for public safety; for approved facility construction/renovation; or as allowed in standards 11–012 or 11–022.

*Potential Amendment, Part 3:* The Draft EIS for the MVP and the October 14, 2016 **Federal Register** Notice of Availability had identified that Forestwide Standard FW–77 may need to be amended. However, a further review of this standard has determined that the proposed pipeline project can be made consistent with this standard and an amendment to this standard will not be needed. This standard is:

*Standard FW–77:* Inventory stands for existing old growth conditions during project planning using the criteria in Appendix D. Consider the contribution of identified patches to the distribution and abundance of the old growth community type and to the desired condition of the appropriate prescription during project analysis.

However, while an amendment to Standard FW–77 will not be needed, since proposed amendment—part 1 has been changed and the lands will not be reallocated to Management Prescription 5C, the pipeline will be located on lands in Management Prescription 6C. As such, the following standards in Management Prescription 6C will need to be amended to allow for a new utility right-of-way within this prescription area:

*Standard 6C–007:* Allow vegetation management activities to: Maintain and restore dry-mesic oak forest, dry and xeric oak forest, dry and dry-mesic oak-pine old growth forest communities; restore, enhance, or mimic historic fire regimes; reduce fuel buildups; maintain rare communities and species dependent on disturbance; provide for public health and safety; improve threatened, endangered, sensitive, and locally rare species habitat; control non-native invasive vegetation.

*Standard 6C–026:* These areas are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites. Existing uses are allowed to continue.

The 36 CFR 219 planning rule requirements likely to be directly related to this part of the amendment are:

§ 219.8(a)(1)—''The plan must include plan components, including standards and guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area, including plan components to maintain or restore structure, function, composition, and connectivity.''

§ 219.11(c)—''The plan may include plan components to allow for timber harvest for purposes other than timber production . . . or portions of the plan area, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan . . .''

*Proposed Amendment, Part 4:* The JNF LRMP would be amended to allow the Mountain Valley Pipeline to be exempt from Management Prescription Area Standard 4A–028 and cross beneath the Appalachian National Scenic Trail (ANST) in Giles County, Virginia. This standard is:

*Standard 4A–028:* Locate new public utilities and rights-of-way in areas of this management prescription area where major impacts already exist. Limit linear utilities and rights-of-way to a single crossing of the prescription area, per project.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(b)(1)(vi)—''[The plan must include plan components to provide for] Appropriate management of other designated areas or recommended designated areas in the plan area.''

The Draft EIS for the MVP and the October 14, 2016 **Federal Register** Notice of Availability had also identified that Management Prescription Area Standard 4A–020 may need to be amended. However, a further review of this standard has determined that the proposed pipeline project can be made consistent with this standard and an amendment to this standard will not be needed. This standard is:

*Standard 4A–020:* All management activities will meet or exceed a Scenic Integrity Objective of High.

*Potential Amendment, Part 5:* After the Draft EIS was released, it has been identified that the JNF may also need to amend Forestwide Standard FW–184 to allow for the construction of the Mountain Valley Pipeline to deviate from the Scenic Integrity Objectives (SIOs) established in the LRMP. This standard is:

*Standard FW–184:* The Forest Scenic Integrity Objectives (SIOs) Maps govern all new projects (including special uses). Assigned SIOS are consistent with Recreation Opportunity Spectrum management direction. Existing conditions may not currently meet the assigned SIO.

The 36 CFR 219 planning rule requirement likely to be directly related to this part of the amendment is:

§ 219.10(b)(i)—''[The plan must include plan components to provide for] ''Sustainable recreation; . . . and scenic character.''

If any of the five parts of the proposed amendment to the JNF LRMP described above are determined to be ''directly related'' to a substantive rule requirement, the Responsible Official must apply that requirement within the scope and scale of the proposed amendment and, if necessary, make adjustments to the proposed amendment to meet the rule requirement (36 CFR 219.13 (b)(5) and (6)).

**Administrative Review of Plan Amendment Decisions**

The decision for a right-of-way grant across Federal lands will be documented in a record of decision issued by the BLM. The BLM's decision to issue, condition, or deny a right-of-way will be subject to BLM administrative review procedures established in 43 CFR 2881.10 and the procedures established in section 313(b) of the Energy Policy Act of 2005. The Forest Service concurrence to BLM to issue the right-of-way grant would not be a decision subject to the NEPA and therefore, would not be subject to the Forest Service administrative review procedures. The Forest Service would, however, issue its own draft record of decision for the project-specific amendment to the JNF LRMP that would be subject to the administrative review procedures under the 36 CFR 218 regulations (per 36 CFR 219.59(b)).

The Reviewing Official for any objection filed on amending the JNF LRMP to allow for the MVP Project will be the Regional Forester for the Southern Region, or if delegated, the Deputy Regional Forester (36 CFR 218.3(a)).

**Responsible Official for Forest Service LRMP Amendments**

The Forest Supervisor for the George Washington and Jefferson National Forests, Joby P. Timm, is the Responsible Official for amending the Jefferson National Forest LRMP.

Dated: May 10, 2017.

**Robert M. Harper,**

*Acting Associate Deputy Chief, National Forest System.*

[FR Doc. 2017–11488 Filed 6–2–17; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Grand Mesa, Uncompahgre and Gunnison National Forests; Delta, Garfield, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache and San Miguel Counties; Colorado; Assessment Report of Ecological, Social and Economic Conditions, Trends and Sustainability for the Grand Mesa, Uncompahgre and Gunnison National Forests

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of initiating the assessment phase of the land management plan revision for the Grand Mesa, Uncompahgre and Gunnison National Forests.

**SUMMARY:** The Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG), located on the western slope of the Colorado Rockies, are initiating the forest planning process pursuant to the 2012 National Forest System Land Management Planning rule. This process will result in a revised and updated Natural Resource Land Management Plan, often referred to as the Forest Plan, which will guide all management activities on the GMUG for the next fifteen years. The current GMUG Forest Plan was completed in 1983, and was subsequently amended in 1991, 1993, 2005, 2007, and 2009. Previous efforts to revise the Forest Plan, including an eight-year effort involving extensive public participation and the development of comprehensive assessments, a need for change report, and a proposed plan were shelved due to the overturning of the 2008 planning rule. Now that the national 2012 Planning Rule has been established, the GMUG will reinitiate the plan revision process.

The plan revision process encompasses three stages: Assessment, plan revision, and monitoring. This notice announces the initiation of the assessment phase, the first stage of the plan revision process, which involves assessing ecological, social and economic conditions and trends in the planning area and documenting the findings in an Assessment report. For the first phase, the GMUG has posted helpful resources, including the current Forest Plan and subsequent amendments, information from the 2006 and 2007 revision efforts, and the Citizen's Guide to National Forest Planning, on the GMUG Forest Plan Web site listed below.

During this assessment phase, the GMUG invites other government agencies, non-governmental parties, and the public to share material about existing and changed conditions, trends, and perceptions of social, economic and ecological systems. The GMUG will host a variety of public outreach forums in summer and fall of 2017 to facilitate this effort, and the public is encouraged to participate and provide meaningful contributions. The GMUG is seeking local knowledge of social values, available data resources, areas of use and activities, goods and services produced by lands within the GMUG, and relevant material that will help inform desired conditions, standards and guidelines, land suitability determinations, and other plan components. This information will help identify gaps in the current management plan and inform the need for change, highlighting priority issues that should be addressed in this revision. Public participation and collaboration are essential steps to understanding current conditions, available data, and feedback needed to support a strategic, efficient and effective revision process.

Several guiding principles, developed to overcome stakeholder-identified challenges, will drive public engagement throughout the plan revision process. These guiding principles include providing direct and transparent communication through a variety of methods, maintaining focused public involvement, building relationships, and promoting sharing, learning and understanding between the agency and the public. These guiding principles will help the GMUG ensure

that public engagement in the current assessment phase and throughout the plan revision process will be functional, accessible, and representative.

**DATES:** In summer and fall of 2017, the public is invited to engage in the assessment phase of the revision process, for which public engagement opportunities will be posted on the GMUG Forest Plan Web site located at: *www.fs.usda.gov/main/gmug/landmanagement/planning.* Information will also be sent out to the Forests' mailing list. If anyone is interested in being included in these notifications, please send an email to *gmugforestplan@fs.fed.us.* The assessment report for the Grand Mesa, Uncompahgre and Gunnison (GMUG) National Forests is expected to be completed by January 2018 and will be posted on the GMUG Forest Plan Web site listed above. The GMUG will then initiate procedures pursuant to the National Environmental Policy Act (NEPA) and prepare and evaluate a revised Forest Plan.

**ADDRESSES:** Send written comments to Grand Mesa, Uncompahgre, and Gunnison National Forests, Attn: Plan Revision, 2250 HWY 50, Delta CO, 81416. Written comments may also be sent via email to *gmugforestplan@fs.fed.us,* or via facsimile to 970–874–6698. All correspondence, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying.

**FOR FURTHER INFORMATION CONTACT:** Clay Speas, Acting Renewable Resources Planning Staff Officer, 970–874–6677, *cspeas@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan, often called a Forest Plan. On April 9th, 2012, the Forest Service finalized its land management planning rule, referred to as the 2012 Planning Rule, which describes requirements for the planning process and provides programmatic direction to National Forests and National Grasslands for developing and implementing their forest plans. Forest plans describe the strategic direction for management of forest resources, and are adaptive and amendable as conditions change over time, in order to remain relevant for their intended application period of 10–15 years.

Similar to the 2008 Planning Rule, the 2012 Planning Rule requires the forests to outline desired conditions for each management area, specify objectives to achieve those conditions, and engage the public extensively throughout the plan revision process. However, the 2012 Planning Rule diverges from previous iterations in several guiding concepts and substantive components, particularly in relying on the concept of ecological integrity to frame plan assessment, develop plan components, and fulfill monitoring requirements. Based on current estimates, it is expected to take four years to produce a revised Forest Plan.

Pursuant to the 2012 Planning Rule (CFR part 219), the revision process encompasses three stages: Assessment, plan revision and monitoring.

*Assessment*—This notice announces the start of the first stage of the process, during which updated information from the public, other federal agencies, and non-governmental parties, as well as still applicable data from the previous revision effort will be compiled in an assessment report. Information relevant to the assessment report may include the current, changed, and changing status of ecological, social and economic conditions within the planning area and their interconnected relationships within the context of the broader landscape. The development of the assessment includes opportunities for the public to contribute information and engage in the planning process and build a common understanding prior to entering formal plan revision. Information gathered will be documented in assessment reports that form the basis for the need for change document, which identifies changes to be included in the new plan to provide management direction adaptable enough to address changing environmental, social and economic conditions.

*Plan Revision*—Using the need for change as a foundation, the GMUG, in coordination with partners and the public, will then begin the plan revision phase of the process. During this phase, a vision statement will be developed that will lead the forests into the future, specifying desired conditions and objectives to help achieve these goals. In compliance with the NEPA, this phase will include the development of alternatives, a proposed action, an environmental impact statement (EIS), and eventually a revised Forest Plan, with announced opportunities for public review and comment. Once the Forest Plan is finalized, all projects and actions that will be implemented on the ground must be in compliance with the Forest Plan.

*Monitoring*—As part of the plan revision, the public will assist the Forest Service in developing a monitoring program, which will be carried out after the revised plan is approved and will continue throughout the life of the plan. The monitoring program should be designed to help evaluate progress towards meeting the desired conditions and objectives established by the Forest Plan, and may include monitoring questions that address the status of watershed conditions, visitor use and satisfaction, effects of management activities, and more. Monitoring efforts should be within the financial and technical capability of the agency and will help the Forest Service and the public evaluate the effectiveness of the Forest Plan by providing feedback and helping determine whether a change in the plan is necessary.

To identify as much relevant information as possible, the GMUG is encouraging contributors to share their concerns and perceptions of the conditions and trends in social, economic and environmental systems within the GMUG planning area. Meetings, review and comment periods, and other opportunities for public engagement throughout the plan revision process will be publicized, with announcements posted on the Forests' planning Web site at *www.fs.usda.gov/main/gmug/landmanagement/planning.* Information will also be sent out to the Forests' mailing list. If anyone is interested in being included in these notifications, please send an email to *gmugforestplan@fs.fed.us.*

## Responsible Official

The responsible official for the revision of the land management plan for the Grand Mesa, Uncompahgre and Gunnison National Forests is Scott Armentrout, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 HWY 50, Delta, CO 81416.

Dated: April 13, 2017.

**Glenn P. Casamassa,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2017–11482 Filed 6–2–17; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–970]**

### Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Final Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** On December 27, 2016, the Department of Commerce (the Department) published the preliminary results of the fourth administrative review (AR) of the antidumping duty (AD) order on multilayered wood flooring (MLWF) from the People's Republic of China (PRC). The period of review (POR) for the AR is December 1, 2014, through November 30, 2015. The AR covers 111 companies. The review covers two mandatory respondents, Dalian Penghong Floor Products Co., Ltd. (Penghong) and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd. (Senmao). We received comments from interested parties on our *Preliminary Results.* Based on our analysis of the comments received, we made changes to the margin calculations for the Final Results of this administrative review. The final dumping margins are listed below in the ''Final Results'' section of this notice.

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** William Horn or Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2615, and (202) 482–3147, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 27, 2016, the Department published in the **Federal Register** the preliminary results of the 2014–2015 administrative review of the antidumping duty order on wood flooring from the PRC.[1] On January 26, 2017, the Department received case briefs from multiple interested parties.[2] Additionally, on January 26, 2017, we received from Power Dekor Group Co., Ltd. a letter in lieu of case brief. On February 6, 2017, the Department received rebuttal briefs from Fine Furniture, Old Master Products Inc. (Old Master), Senmao and the HB Respondents, and CAHP. Also, on January 26, 2017, the Department received requests for a hearing from CAHP and Penghong. All parties later withdrew their requests for a hearing.[3] On March 31, 2017, we extended the time period for issuing the Final Results of this review by 30 days, until May 26, 2017.[4]

## Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[5] Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

## Methodology

The Department has conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). Export prices and constructed export prices have been calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (NME) within the meaning of section 771(18) of the Act, normal value (NV) has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, please *see* Issues and Decision Memorandum, hereby adopted by this notice.[6] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* The Issues and Decision Memorandum is also available in the Central Records Unit,

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Preliminary Partial Rescission of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 95114 (December 27, 2016) (*Preliminary Results).*

[2] *See* Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding ''Issue and Decision Memorandum for the Final Results of the 2014–2015 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China,'' (Issue and Decision Memorandum), issued and dated concurrently with this notice.

[3] Penghong and DH Respondents letter to the file re: ''Multilayered Wood Flooring from the People's Republic of China—Withdrawal of Hearing Request'' dated March 7, 2017 and CAHP letter to the file re: ''Multilayered Wood Flooring from the People's Republic of China'' dated March 7, 2017.

[4] Memo to the file re: ''Multilayered Wood Flooring from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated March 31, 2017.

[5] *See* Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding ''Issue and Decision Memorandum for the Final Results of the 2014–2015 Antidumping Duty Administrative Review of Multilayered Wood Flooring from the People's Republic of China,'' (Issue and Decision Memorandum), issued and dated concurrently with this notice, for a complete description of the Scope of the Order.

[6] A list of topics discussed in the Issues and Decision Memorandum is provided in the Appendix to this notice.

Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Final Determination of No Shipments**

In the *Preliminary Results,* we found that nine companies had no shipments during the POR.[7] Power Dekor submitted comments stating the Department made an inadvertent error in the *Preliminary Results* by not recognizing Power Dekor's timely filed no-shipment letter.[8] We have reviewed Power Dekor's comments and no-shipment letter and have found that Power Dekor had no shipments during this POR.[9] Therefore, for these Final Results, we find that a total of ten companies had no shipments during the POR.[10] Consistent with our ''automatic assessment'' clarification, we will issue appropriate instructions with respect to these companies to CBP based on our Final Results.[11] In addition, as discussed below, these companies will maintain their rate from the most recent segment in which they participated.

**Changes Since the Preliminary Results**

- We granted Power Dekor no shipment status during the POR.[12]
- We assigned a separate rate to the Fusong Jinlong Group, which includes all four members of the group: Fusong Jinlong Wooden Group Co., Ltd., Fusong Qianqiu Wooden Product Co., Ltd., Dalian Qianqiu Wooden Product Co., Ltd., and Fusong Jinqiu Wooden Product Co., Ltd.[13]
- We revised the calculation of the surrogate value for water in Penghong's margin program by converting MT to KG before applying the water surrogate value to the reported water consumption.[14]
- We added the value of free of charge inputs to Penghong's calculation of export price as applicable.[15]
- We corrected the surrogate values for red oak, jatoba, plastic strip, and overlaying glue that are applicable for Senmao; that were inadvertently assigned incorrect surrogate values in the *Preliminary Results.*[16]
- We revised the surrogate value for plywood for Senmao to reflect Romanian Harmonized Tariff Schedule (HTS) 441232 rather than using a simple average of Romanian HTS 44123210 and 44123190.[17]

**Final Results of the Administrative Review**

The Department determines that twenty companies subject to this review did not establish eligibility for a separate rate. As such, we determine they are part of the PRC-wide entity.[18] Because no party requested a review of the PRC-wide entity and the Department no longer considers the PRC-wide entity as an exporter conditionally subject to administrative reviews,[19] we did not conduct a review of the PRC-wide entity. Thus, the rate for the PRC-wide entity is not subject to change as a result of this review. For companies subject to this review that have established their entitlement to a separate rate the Department calculated a separate rate based on the expected method according to 735(c)(5)(A) of the Act. For further discussion see accompanying *Issues and Decisions Memorandum* at comment 3.

For companies subject to this review that have established their eligibility for a separate rate, the Department determines that the following dumping margins exist for the POR from December 1, 2014, through November 30, 2015:

| Exporter[20] | Weighted-average dumping margin |
|---|---|
| Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd | 0.00 |
| Jiangsu Senmao Bamboo and Wood Industry Co., Ltd | *0.23 |
| A&W (Shanghai) Woods Co., Ltd | 0.00 |
| Anhui Boya Bamboo & Wood Products Co., Ltd | 0.00 |
| Anhui Longhua Bamboo Product Co., Ltd | 0.00 |
| Baishan Huafeng Wooden Product Co., Ltd | 0.00 |
| Benxi Wood Company | 0.00 |
| Changzhou Hawd Flooring Co., Ltd | 0.00 |
| Chinafloors Timber (China) Co., Ltd | 0.00 |

[7] *See Preliminary Results.*

[8] *See Multilayered Wood Flooring from People's Republic of China: Power Dekor Group Co., Ltd.'s Letter in Lieu of Case Brief* (January 26, 2017), at 2.

[9] *See* Issues and Decisions Memorandum dated concurrently with this notice at comment 4.

[10] Changbai Mountain Development and Protection Zone Hongtu Wood Industrial Co., Ltd.; Dalian Xinjinghua Wood Co., Ltd.; Guangzhou Homebon Timber Manufacturing Co., Ltd.; Henan Xingwangjia Technology Co., Ltd.; Jiangsu Yuhui International Trade Co., Ltd.; Power Dekor Group Co., Ltd.; Shenyang Senwang Wooden Industry Co., Ltd.; Xuzhou Antop International Trade Co., Ltd.; Yekalon Industry Inc.; and Zhejiang Shuimojiangnan New Material Technology Co., Ltd.

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment of Antidumping Duties*); *see also* the ''Assessment'' section of this notice, below.

[12] *See* Issues and Decision Memorandum at comment 4.

[13] *See* Issues and Decision Memorandum at comment 6.

[14] *See* Memorandum to the File from William Horn, International Trade Compliance Analyst, ''Multilayered Wood Flooring from the People's Republic of China: Analysis of the Final Results Margin Calculation for Dalian Penghong Floor Products Co., Ltd.,'' dated concurrently with this determination (Penghong Final Analysis Memorandum), at page 2.

[15] *Id.,* at page 2 and Exhibit 1.

[16] *See* Memorandum to the File from Aleksandras Nakutis, International Trade Compliance Analyst, ''Multilayered Wood Flooring from the People's Republic of China: Analysis of the Final Results Margin Calculation for Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.,'' dated concurrently with this determination (Senmao Final Analysis Memorandum), at page 2.

[17] Id., at page 2.

[18] The following companies were named in the *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832, 6835–37 (February 9, 2016) (*First Initiation Notice*) and 81 FR 11179, 11182 (March 3, 2016) (*Second Initiation Notice*), but did not submit a certification of no shipment, separate rate application or separate rate certification, or otherwise establish eligibility for a separate rate; therefore they are part of the PRC-wide entity: Anhui Suzhou Dongda Wood Co., Ltd.; Baiying Furniture Manufacturer Co., Ltd.; Cheng Hang Wood Co., Ltd.; HaiLin XinCheng Wooden Products, Ltd.; Hangzhou Dazhuang Floor Co., Ltd (dba Dasso Industrial Group Co., Ltd).; Hangzhou Huahi Wood Industry Co., Ltd.; Huber Engineering Wood Corp.; Huzhou City Nanxun Guangda Wood Co., Ltd.; Huzhou Fuma Wood Co., Ltd.; Jiafeng Wood (Suzhou) Co., Ltd.; Qingdao Barry Flooring Co., Ltd.; Shandong Kaiyuan Wood Industry Co., Ltd.; Shanghai Anxin (Weiguang) Timber Co., Ltd.; Shanghai Eswell Timber Co., Ltd.; Shanghai New Sihe Wood Co., Ltd.; Shanghai Shenlin Corporation; Vicwood Industry (Suzhou) Co. Ltd.; Yixing Lion-King Timber Industry; Zhejiang AnJi XinFeng Bamboo & Wood Industry Co., Ltd.; Zhejiang Desheng Wood Industry Co., Ltd.; and Zhejiang Haoyun Wooden Co., Ltd.

[19] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

| Exporter[20] | Weighted-average dumping margin |
|---|---|
| Dalian Dajen Wood Co., Ltd | 0.00 |
| Dalian Huade Wood Product Co., Ltd | 0.00 |
| Dalian Huilong Wooden Products Co., Ltd | 0.00 |
| Dalian Jiahong Wood Industry Co., Ltd | 0.00 |
| Dalian Jiuyuan Wood Industry Co., Ltd | 0.00 |
| Dalian Kemian Wood Industry Co., Ltd | 0.00 |
| Dalian T-Boom Wood Products Co., Ltd | 0.00 |
| Dongtai Fuan Universal Dynamics, LLC | 0.00 |
| Dunhua City Hongyuan Wood Industry Co., Ltd | 0.00 |
| Dun Hua City Jisen Wood Industry Co., Ltd | 0.00 |
| Dunhua City Wanrong Wood Industry Co., Ltd | 0.00 |
| Dunhua City Dexin Wood Industry Co., Ltd | 0.00 |
| Dun Hua Sen Tai Wood Co., Ltd | 0.00 |
| Fine Furniture (Shanghai) Limited and Double F Limited[21] | 0.00 |
| Fusong Jinlong Wooden Group Co., Ltd[22] | 0.00 |
| GTP International Ltd | 0.00 |
| Guangdong Yihua Timber Industry Co., Ltd | 0.00 |
| Guangzhou Panyu Kangda Board Co., Ltd | 0.00 |
| Guangzhou Panyu Southern Star Co., Ltd | 0.00 |
| HaiLin LinJing Wooden Products Co., Ltd | 0.00 |
| Hangzhou Hanje Tec Co., Ltd | 0.00 |
| Hunchun Forest Wolf Wooden Industry Co., Ltd | 0.00 |
| Hunchun Xingjia Wooden Flooring Inc | 0.00 |
| Huzhou Chenghang Wood Co., Ltd | 0.00 |
| Huzhou Fulinmen Imp. & Exp. Co., Ltd | 0.00 |
| Huzhou Jesonwood Co., Ltd | 0.00 |
| Huzhou Sunergy World Trade Co., Ltd | 0.00 |
| Jiangsu Guyu International Trading Co., Ltd | 0.00 |
| Jiangsu Kentier Wood Co., Ltd | 0.00 |
| Jiangsu Mingle Flooring Co., Ltd | 0.00 |
| Jiangsu Simba Flooring Co., Ltd | 0.00 |
| Jiashan HuiJiaLe Decoration Material Co., Ltd | 0.00 |
| Jiashan On-Line Lumber Co., Ltd | 0.00 |
| Jiaxing Hengtong Wood Co., Ltd | 0.00 |
| Jilin Forest Industry Jinqiao Flooring Group Co., Ltd | 0.00 |
| Jilin Xinyuan Wooden Industry Co., Ltd | 0.00 |
| Karly Wood Product Limited | 0.00 |
| Kember Hardwood Flooring Inc | 0.00 |
| Kemian Wood Industry (Kunshan) Co., Ltd | 0.00 |
| Kingman Floors Co., Ltd | 0.00 |
| Linyi Anying Wood Co., Ltd | 0.00 |
| Linyi Bonn Flooring Manufacturing Co., Ltd | 0.00 |
| Linyi Youyou Wood Co., Ltd[23] | 0.00 |
| Metropolitan Hardwood Floors, Inc | 0.00 |
| MuDanJiang Bosen Wood Industry Co., Ltd | 0.00 |
| Nakahiro Jyou Sei Furniture (Dalian) Co., Ltd | 0.00 |
| Pinge Timber Manufacturing (Zhejiang) Co., Ltd | 0.00 |
| Puli Trading Limited | 0.00 |
| Scholar Home (Shanghai) New Material Co., Ltd | 0.00 |
| Shanghai Lairunde Wood Co., Ltd | 0.00 |
| Shenyang Haobainian Wooden Co., Ltd | 0.00 |
| Shenzhenshi Huanwei Woods Co., Ltd | 0.00 |
| Sino-Maple (JiangSu) Co., Ltd | 0.00 |
| Suzhou Dongda Wood Co., Ltd | 0.00 |
| Tongxiang Jisheng Import and Export Co., Ltd | 0.00 |
| Xiamen Yung De Ornament Co., Ltd | 0.00 |
| Xuzhou Shenghe Wood Co., Ltd | 0.00 |
| Yingyi-Nature (Kunshan) Wood Industry Co., Ltd | 0.00 |
| Zhejiang Biyork Wood Co., Ltd | 0.00 |
| Zhejiang Dadongwu Green Home Wood Co., Ltd | 0.00 |
| Zhejiang Fudeli Timber Industry Co., Ltd | 0.00 |
| Zhejiang Fuerjia Wooden Co., Ltd | 0.00 |
| Zhejiang Fuma Warm Technology Co., Ltd | 0.00 |
| Zhejiang Jiechen Wood Industry Co., Ltd | 0.00 |
| Zhejiang Longsen Lumbering Co., Ltd | 0.00 |
| Zhejiang Shiyou Timber Co., Ltd | 0.00 |

* *De minimis.*

## Final Partial Rescission of Antidumping Duty Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an

[20] The mandatory respondents for this review included Dalian Penghong Floor Products Co., Ltd./Dalian Shumaike Floor Manufacturing Co., Ltd. and Jiangsu Senmao Bamboo and Wood Industry Co., Ltd.

[21] *See Issues and Decisions Memorandum* at comment 5.

[22] In prior reviews, the Department determined that the four affiliated companies that comprise the Fusong Jinlong Group, namely, Fusong Jinlong Wooden Group Co., Ltd., Fusong Qianqiu Wooden Product Co., Ltd., Dalian Qianqiu Wooden Product Co., Ltd., and Fusong Jinqiu Wooden Product Co., Ltd., are sufficiently interrelated that for antidumping analysis purposes they should be treated together, and should together be assigned the separate rate on a common basis. The Department has received no information to contradict this finding. Therefore, in these Final Results, the Department has applied the separate

administrative review, in whole or in part, if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Jiangsu Keri Wood Co., Ltd. withdrew its respective request for an administrative review within 90 days of the date of publication of the *Initiation Notice.*[24] Accordingly, the Department rescinded this review with respect to Jiangsu Keri Wood Co., Ltd., in accordance with 19 CFR 351.213(d)(1).[25] The Department reviewed Jiangsu Keri Wood Co., Ltd. as part of its concurrent new shipper review and intends to issue appropriate instructions to CBP based on the results therein.[26]

With respect to Dongtai Zhangshi Wood Industry Co., Ltd. and Huzhou Muyun Wood Co., Ltd., the Department has found each of these company's one sale during the POR to be a non-*bona fide* sale in a concurrent new shipper review (''NSR'').[27] Because the sale subject to this administrative review is the same sale found to be a non-*bona fide* sale in the new shipper review, and there are no other reviewable sales by either company during the POR, we are rescinding this review with respect to Dongtai Zhangshi Wood Industry Co., Ltd. and Huzhou Muyun Wood Co., Ltd.

**Assessment Rates**

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[28] The Department intends to issue assessment instructions to CBP 15 days after the publication date of these Final Results of review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent), the Department will calculate importer- (or customer)-specific assessment rates for merchandise subject to this review. In these Final Results, the Department applied the assessment rate calculation method adopted in the *Final Modification for Reviews.*[29] Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer-) specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[30] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the current rate for the PRC-wide entity (which, as noted above, is not subject to change in this review).

In accordance with section 751(a)(2)(C) of the Act, the Final Results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the Final Results of this review and for future deposits of estimated duties, where applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these Final Results of review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the companies listed above the cash deposit rate will be their respective rate established in the Final Results of this review, except if the rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero; (2) for previously investigated PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure**

The Department intends to disclose calculations performed for these Final Results to the parties within five days of the date of publication of this notice.[31]

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order (APO)**

This notice also serves as a final reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Interested Parties**

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: May 26, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix—List of Topics Discussed in the Issues and Decision Memorandum**



rate on a common basis to the four companies that comprise the Fusong Jinlong Group.

[23] On September 30, 2014, the Department determined that Linyi Youyou Wood Co., Ltd. is the successor-in-interest to Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai. *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014). Because Shanghai Lizhong Wood Products Co., Ltd./The Lizhong Wood Industry Limited Company of Shanghai no longer exists as a legal entity, the rate is assigned to Linyi Youyou Wood Co., Ltd.

[24] *See* Letter from Jiangsu Keri Wood Co., Ltd. to the Department regarding ''*Withdrawing of Review Request*'' dated February 22, 2016.

[25] *See Preliminary Results.*

[26] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014–2015,* dated concurrently with this notice.

[27] *See Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014–2015,* 81 FR 74393 (October 26, 2016).

[28] *See* 19 CFR 351.212(b)(1).

[29] *See Antidumping Proceeding Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[30] *See* 19 CFR 351.106(c)(2).

[31] *See* 19 CFR 351.224(b).

the separate rate in this review if both mandatory respondents earn de minimis rates
iv. Comment 4: Consideration of Power Dekor's no shipment certification
v. Comment 5: Inclusion of Fine Furniture's affiliate's name in customs instructions and **Federal Register** Notice
vi. Comment 6: Treatment of Fusong Jinlong group as a single entity
vii. Comment 7: Overstatement of water SV
viii. Comment 8: Overstatement of NV or understatement of export price
ix. Comment 9: The Department must correct the Jatoba and Red Oak surrogate values
x. Comment 10: The Department should correct its valuation of Senmao's wood veneers
xi. Comment 11: Glue surrogate value
xii. Comment 12: Senmao's by product offset for wood scrap
xiii. Comment 13: The Department should correct the surrogate value references for plastic strip and overlaying glue in Senmao's margin calculations
xiv. Comment 14: Senmao's plywood surrogate value

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–944]**

### Oil Country Tubular Goods From the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** On May 3, 2017, the United States Court of International Trade (CIT or the Court) entered final judgment sustaining the Department of Commerce's (Department) final remand redetermination concerning the countervailing duty (CVD) investigation of oil country tubular goods (OCTG) from the People's Republic of China (PRC). The Department is notifying the public of that the Court's final judgment in this case is not in harmony with the Department's amended final determination with respect to Jiangsu Changbao Steel Tube Co., Ltd. (Changbao), Tianjin Pipe (Group) Co. (TPCO), Wuxi Seamless Oil Pipe Co., Ltd. (Wuxi), and Zhejiang Jianli Enterprise Co., Ltd. (Jianli), and all other exporters and producers.

**DATES:** Effective May 13, 2017.

**FOR FURTHER INFORMATION CONTACT:** Aimee Phelan or Jennifer Shore, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0697 or (202) 482–2778, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On December 7, 2009, the Department published its final determination in the CVD investigation of OCTG from the PRC.[1] On January 20, 2010, the Department published an amended final determination and the CVD order.[2]

The Court remanded aspects of the Department's findings for further consideration.[3] In particular, in the *Remand and Opinion Order,* the CIT ordered the Department to clarify or reconsider: (1) Its use of the date of the PRC accession to the World Trade Organization (WTO) as a uniform cut-off date for identifying and measuring subsidies in the PRC; (2) its attribution methodology for subsidies received by certain of Changbao's and TPCO's subsidiaries; (3) its decision to include Jianli's freight quote in the benchmark price for steel rounds and billets; and (4) its decision not to tie the benefit received by TPCO from the provision of steel rounds and billets at less-than-adequate remuneration to its sales of seamless steel pipe.[4] Finally, the Court granted the Department's request for a voluntary remand to recalculate the benchmark for steel rounds without Steel Business Briefing (SBB) East Asia pricing data.[5]

On December 20, 2016, the Department issued its *Remand Redetermination.*[6] In its *Remand Redetermination,* the Department: (1) Evaluated certain subsidies and determined a date prior to the WTO accession date on which subsidies provided to the respondents could be identified and measured for purposes of the remand; (2) changed the methodology for attributing to Changbao and TPCO subsidies provided to certain of their subsidiaries; (3) continued to find that the freight rates used by the Department in the investigation to adjust the benchmark for steel rounds are representative of what an importer paid or would pay if it imported the product; (4) clarified the finding that the provision of steel rounds was not tied to TPCO's seamless steel pipe production; and (5) removed SBB East Asia pricing data from the benchmark for steel rounds. The resulting calculations changed the CVD rates calculated for Changbao, Jianli, TPCO, and Wuxi, as well as their respective cross-owned companies, and the all-others rate.

On May 3, 2017, the CIT sustained the Department's *Remand Redetermination.*[7] In particular, the Court held that the *Remand Redetermination* ''adequately address{ed} the concerns raised in the court's prior decision'' and was ''supported by substantial evidence.'' [8]

#### Timken Notice

In its decision in *Timken*,[9] as clarified by *Diamond Sawblades,*[10] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's May 3, 2017, final judgment affirming the *Remand Redetermination* constitutes a final decision of that court which is not in harmony with the *Amended Final Determination and Order.* This notice is published in fulfillment of the publication requirements of *Timken.*

#### Amended Final Determination

As there is now final court decision, the Department amends its *Amended Final Determination and Order.* The Department finds that the following revised net countervailable subsidy rates exist:

[1] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) (*Final Determination*).

[2] *See Certain Oil Country Tubular Goods from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 3203 (January 20, 2010) (*Amended Final Determination and Order*).

[3] *See TMK IPSCO et al.* v. *United States,* Consol. Court No. 10–00055, Slip Op. 16–62 (CIT June 24, 2016) (*Remand Opinion and Order*).

[4] *See Remand Opinion and Order,* at 57.

[5] *Id.,* at 58.

[6] *See Final Results of Remand Redetermination,* Court No. 10–00055, dated December 20, 2016, available at: *http://ia.ita.doc.gov/remands/* (*Remand Redetermination*).

[7] *See TMK IPSCO* v. *United States,* Consol. Court No. 10–00055, Slip Op. 17–54 (CIT May 3, 2017).

[8] *Id.* at 3.

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

| Producer/exporter | Net subsidy rate (percent) |
|---|---|
| Jiangsu Changbao Steel Tube Co. and Jiangsu Changbao Precision Steel Tube Co., Ltd | 28.70 |
| Tianjin Pipe (Group) Co., Tianjin Pipe Iron Manufacturing Co., Ltd., Tianguan Yuantong Pipe Product Co., Ltd., Tianjin Pipe International Economic and Trading Co., Ltd., and TPCO Charging Development Co., Ltd | 21.48 |
| Wuxi Seamless Pipe Co, Ltd., Jiangsu Fanli Steel Pipe Co, Ltd., Tuoketuo County Mengfeng Special Steel Co., Ltd | 29.48 |
| Zhejiang Jianli Enterprise Co., Ltd., Zhejiang Jianli Steel Steel Tube Co., Ltd., Zhuji Jiansheng Machinery Co., Ltd., and Zhejiang Jianli Industry Group Co., Ltd | 30.56 |
| All-Others | 27.08 |

**Cash Deposit Requirements**

Because there has been a subsequent administrative review for Wuxi, the cash deposit rate for Wuxi will remain the rate established in the final results of the 2012 administrative review, which is 59.29 percent.[11] Because there have been no subsequent administrative reviews for Changbao, TPCO, and Jianli, the Department will instruct U.S. Customs and Border Protection (CBP) to set the cash deposit rates for these companies to the rates listed above, again, pending a final and conclusive court decision.[12]

Pursuant to section 705(c)(5)(A) of the Act, companies not individually investigated are assigned an ''all-others'' countervailable duty rate. As a general rule, the all-others rate is equal to the weighted average countervailable subsidy rates established for individually investigated producers and producers, excluding any zero and *de minimis* countervailable subsidy rates.[13] The Department will instruct CBP that the ''all-others'' cash deposit rate is to be amended to reflect the weighted-average of the revised subsidy rates calculated for Changbao, TPCO, Wuxi, and Jianli, as listed above.

This notice is issued and published in accordance with sections 516A(e)(1), 705(c)(1)(B), and 777(i)(1) of the Act.

Dated: May 30, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–11562 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[11] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 52301 (September 3, 2014).

[12] As explained in the *Remand Redetermination,* the Department established new cash deposit rates for TPCO and all-others in proceedings conducted under section 129 of the Uruguay Round Agreements Act. *See Implementation of Determinations Pursuant to Section 129 of the Uruguay Round Agreements Act,* 81 FR 37180, 37182 (June 9, 2016). The Department used these revised rates as the basis for calculating revised cash deposit rates in the *Remand Redetermination. See Remand Redetermination* at 56.

[13] *See* section 705(c)(5)(A)(i) of the Act.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–837; C–489–832]**

### Carbon and Alloy Steel Wire Rod From Italy and the Republic of Turkey: Postponement of Preliminary Determinations of Countervailing Duty Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** John Corrigan and Yasmin Bordas at (202) 482–7438 and (202) 482–3813, respectively (Italy); Justin Neuman and Omar Qureshi at (202) 482–0486 and (202) 482–5307, respectively (Turkey), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 17, 2017, the Department of Commerce (Department) initiated countervailing duty investigations (CVD) on carbon and alloy steel wire rod from Italy and the Republic of Turkey (Turkey).[1] Currently, the preliminary determinations of these investigations are due no later than June 21, 2017.

**Postponement of Preliminary Determination**

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, if the petitioner makes a timely request for a postponement, section 703(c)(1)(A) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the Department initiated the investigation.

On May 25, 2017, Nucor Corporation (Nucor), a petitioner in the underlying investigation, submitted timely requests pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.[2] For the reasons stated above and because there are no compelling reasons to deny the requests, the Department, in accordance with section 703(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. Accordingly, the Department will issue the preliminary determinations no later than August 25, 2017. In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 30, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–11563 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Carbon and Alloy Steel Wire Rod from Italy and Turkey: Initiation of Countervailing Duty Investigations,* 82 FR 19213 (April 26, 2017).

[2] *See* Nucor letter re: Carbon and Certain Alloy Steel Wire Rod from Italy: Request to Postpone Preliminary Determination, dated May 25, 2017 (C–475–837); *see also* Nucor letter re: Carbon and Certain Alloy Steel Wire Rod from the Republic of Turkey: Request to Postpone Preliminary Determination, dated May 25, 2017 (C–489–832).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–832]**

### Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015–2016

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** On January 30, 2017, the Department of Commerce (Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (PRC) covering the period May 1, 2015 through April 30, 2016. This review covers Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal, Co., Ltd (TMM). The Department preliminarily found that TMI and TMM did not have reviewable entries during the period of review (POR). The Department gave interested parties an opportunity to comment on the *Preliminary Results,* but we received no comments. Hence, the final results are unchanged from the *Preliminary Results,* and we continue to find that TMI/TMM did not have reviewable entries during the period of review (POR).

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra or Brendan Quinn, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965 or (202) 482–5848, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 30, 2017, the Department published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results,*[2] but no comments were received.

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

## Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

## Final Determination of No Shipments

As noted above, the Department received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments on, the *Preliminary Results,* the Department finds that there is no reason to modify its analysis. Thus, we continue to find that TMI/TMM[3] had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR.[4] Accordingly, no decision memorandum accompanies this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see* the *Preliminary Results.*

## Assessment Rates

The Department determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).[5] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

Additionally, consistent with the Department's refinement to its assessment practice in non-market economy cases, because the Department determined that TMI/TMM had no shipments of subject merchandise during the POR, any suspended entries of subject merchandise during the POR from TMI/TMM will be liquidated at the PRC-wide rate.[6]

## Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For TMI/TMM, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to TMI/TMM in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject

[1] *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016,* 82 FR 8720 (January 30, 2017) (*Preliminary Results*).

[2] *Id.,* 82 FR at 8721.

[3] In the 2011–2012 administrative review of the order, the Department determined TMM and TMI to be collapsed and treated as a single company for purposes of the proceeding and, because there were no changes to the facts which supported that decision since that determination was made, we continue to find that these companies are part of a single entity for this administrative review. *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

[4] *See Preliminary Results,* 82 FR at 8721.

[5] *See* 19 CFR 351.212(b).

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent;[7] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 30, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–11564 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[7] *See Pure Magnesium from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–357–821 and C–560–831]**

### Biodiesel From Argentina and Indonesia: Postponement of Preliminary Determinations of Countervailing Duty Investigations

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Elfi Blum (Argentina) at (202) 482–0197, or Joseph Traw (Indonesia) at (202) 482–6079, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 12, 2017, the Department of Commerce (Department) initiated countervailing duty investigations (CVD) on biodiesel from Argentina and Indonesia.[1] Currently, the preliminary determinations of these investigations are due no later than June 16, 2017.

**Postponement of Preliminary Determination**

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a CVD investigation within 65 days after the date on which the Department initiated the investigation. However, section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) allow the Department to postpone the preliminary determination at the request of the petitioner.

On May 22, 2017, the petitioner[2] submitted a timely request pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(e) to postpone the preliminary determinations.[3] For the reasons stated above and because there are no compelling reasons to deny the request, the Department, in accordance with section 703(c)(1)(A) of the Act, is postponing the deadline for the preliminary determinations to no later than 130 days after the day on which the investigations were initiated. Accordingly, the Department will issue the preliminary determinations no later than August 20, 2017. However, because August 20, 2017 falls on a Sunday, the preliminary determinations are now due no later than August 21, 2017.[4] In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: May 26, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2017–11435 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] *See Biodiesel from Argentina and Indonesia: Initiation of Countervailing Duty Investigation,* 82 FR 18423 (April 19, 2017).

[2] The National Biodiesel Board Fair Trade Coalition and its individual members.

[3] *See* letter from the petitioner entitled ''Biodiesel from Argentina and Indonesia: Request For Postponement Of The Preliminary Determinations,'' dated May 22, 2017.

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–970]**

### Multilayered Wood Flooring From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Commerce.

**SUMMARY:** On December 28, 2016, the Department of Commerce (the Department) published the preliminary results, and partial rescission, of the new shipper reviews of the antidumping duty (AD) order on multilayered wood flooring (MLWF) from the People's Republic of China (PRC). Based on our analysis of the comments received, we continue to find Zhejiang Simite Wooden Co., Ltd.'s (Simite Wooden) sale to be non-*bona fide.* Therefore, we are rescinding the new shipper review (NSR) with respect to Simite Wooden. We also continue to find that Jiangsu Keri Wood Co., Ltd. (Keri Wood) did not make a sale at less than normal value (NV), and is eligible for a separate rate. The final dumping margin for Keri Wood is listed in the ''*Final Results of Kerri Wood's New Shipper Review*'' section of this notice, below.

**DATES:** Effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5831.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 28, 2016, the Department published its *Preliminary Results* [1] of the NSRs of the AD order on MLWF from the PRC. The period of review (POR) for the new shipper reviews (NSR) is December 1, 2014, through November 30, 2015. These reviews cover two producers/exporters of subject merchandise: Simite Wooden and Keri Wood.[2] As discussed below, we preliminarily found that the single sale made by Simite Wooden is not *bona fide,* and announced our preliminary intent to rescind its NSR. We also preliminarily determined that Keri Wood made a single *bona fide* sale which was not below NV and that it is eligible for a separate rate. Simite Wooden submitted its case brief on February 17, 2017.[3] For the final results of this review, although we have made certain further adjustments to our *bona fide* analysis for Simite Wooden, we continue to find Simite Wooden's sale to be non-*bona fide.* Therefore, we are rescinding the NSR with respect to Simite Wooden. We also continue to find that Keri Wood did not make a sale at less than NV and is eligible for a separate rate. Therefore, with respect to Keri Wood, our final results remain unchanged from the *Preliminary Results.*

For a complete description of the events that followed the publication of the *Preliminary Results,* see the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty (CVD) Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

## Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[5] Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.3175; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

## Analysis of Comments Received

All issues raised in the case brief submitted by Simite Wooden are addressed in the Issues and Decision Memorandum.[6] A list of the issues which parties raised is attached to this notice as an Appendix.

## Final Rescission of Simite Wooden's New Shipper Review

In the *Preliminary Results,* the Department analyzed the *bona fides* of Simite Wooden's sale and preliminarily found it was not a *bona fide* sale.[7] Based on the Department's analysis of all of the comments and record evidence of this review, the Department has made certain changes to its analysis, but still continues to find that Simite Wooden's sale is not a *bona fide* sale. Accordingly, we have determined to rescind this NSR with respect to Simite Wooden.

For a complete discussion, *see* the Simite Wooden Prelim Bona Fide Memo and the Issues and Decision Memorandum.

## Final Results of Kerri Wood's New Shipper Review

No party filed a case brief in response to the Department's invitation to comment on the *Preliminary Results* with respect to our findings for Keri Wood. Therefore, for these final results, the Department has made no changes to its calculations announced in the *Preliminary Results* for this company. For the final results of Kerri Wood's new shipper review, the Department continues to determine that the following weighted-average dumping margin exists for the POR from December 1, 2014, through November 30, 2015:

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Reviews; 2014–2015,* 81 FR 95566 (December 28, 2016) (*Preliminary Results); see also* Memorandum to Abdelali Elouaradia, Director, Enforcement and Compliance, Office IV, from Maisha Cryor, International Trade Compliance Analyst, Enforcement and Compliance, Office IV entitled ''Antidumping Duty New Shipper Review of Multilayered Wood Flooring from the People's Republic of China: Preliminary Bona Fide Sale Analysis for Zhejiang Simite Wooden Co., Ltd., dated December 20, 2016 (Simite Wooden Prelim Bona Fide Memo); Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results and Rescission, In Part, of Antidumping Duty New Shipper Reviews, 2014–2015: Mutilayered Wood Flooring from the People's Republic of China,'' dated December 20, 2016 (*Preliminary Decision Memorandum*).

[2] *See Preliminary Results.*

[3] *See* Letter from Simite Wooden to the Secretary of Commerce, ''Multilayered Wood Flooring from the People's Republic of China; A–570–970; New Shipper Review of Zhejiang Simite Wooden Co., Ltd.; Case Brief,'' dated February 17, 2017.

[4] *See* Memorandum from Gary Taveramn, Acting Deputy Assistant Secretary, Antidumping and Countervailing Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled '' Issues and Decision Memorandum for the Final Results and the Partial Rescission of the 2014–2015 Antidumping Duty New Shipper Reviews: Multilayered Wood Flooring from the People's Republic of China'' issued concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[5] *Id.*

[6] *Id.*

[7] *See* Simite Wooden Prelim Bona Fide Memo.

| Exporter | Producer | Weighted-average dumping margin (percent) |
|---|---|---|
| Jiangsu Keri Wood Co., Ltd. | Jiangsu Keri Wood Co., Ltd. | 0.00 |

**Assessment**

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by the NSR with respect to Keri Wood.[8] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department intends to instruct CBP to liquidate entries of subject merchandise Keri Wood without regard to antidumping duties because its weighted-average dumping margin in these final results is zero.[9] For entries that were not reported in the U.S. sales data submitted by Keri Wood, the Department intends to instruct CBP to liquidate such entries at the rate for the PRC-wide entity.[10]

As the Department is rescinding the NSR with respect to Simite Wooden, we have not calculated a company-specific dumping margin for Simite Wooden. Simite Wooden's entries covered by this NSR will be assessed at the cash deposit rate required at the time of entry, which is the PRC-wide rate (*i.e.,* 25.62 percent).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results and partial rescission of this NSR for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act. For Kerri Wood, because it has received a separate rate, and the rate established in the final results of this NSR is zero, a zero cash deposit will be required. For Simite Wooden, the Department will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise from Simite Wooden. Because we did not calculate a dumping margin for Simite Wooden or otherwise find that Simite Wooden is eligible for a separate rate in this review, Simite Wooden continues to be part of the PRC-wide entity. The cash deposit rate for the PRC-wide entity is 25.62 percent. These cash deposit requirements shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in these segments of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and (C) and 777(i) of the Act, and 19 CFR 351.214.

Dated: May 26, 2017.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix—Issues and Decision Memorandum**



[FR Doc. 2017–11560 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–DS–P**

[8] *See* 19 CFR 351.212(b)(1).

[9] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[10] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Open Meeting of the Information Security and Privacy Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, June 28, 2017 from 9:00 a.m. until 4:30 p.m., Eastern Time, Thursday, June, 29, 2017, from 9:00 a.m. until 3:00 p.m., Eastern Time, and Friday, June 30, 2017 from 9:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public.

**DATES:** The meeting will be held on Wednesday, June 28, 2017, from 9:00 a.m. until 4:30 p.m., Eastern Time, Thursday, June 29, 2017, from 9:00 a.m. until 3:00 p.m., Eastern Time, and Friday, June 30, 2017 from 9:00 a.m. until 12:00 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held at the Constitution Hall, American University, 4400 Massachusetts Ave. NW., Washington, DC 20016.

**FOR FURTHER INFORMATION CONTACT:** Matthew Scholl, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2941, Email address: *mscholl@nist.gov.*

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, June 28, 2017, from 9:00 a.m. until 4:30 p.m., Eastern Time, Thursday, June 29, 2017, from 9:00 a.m. until 3:00 p.m., Eastern Time, and Friday, June 30, 2017 from 9:00 a.m. until 12:00 p.m. Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the

National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including thorough review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html.*

The agenda is expected to include the following items:

—Deliberations and recommendations by the board,
—Presentation and discussion on next generation identity management technologies,
—Discussion on capabilities of virtualization to enhance cybersecurity,
—Threat brief presentation on activities of advanced persistent threats,
—Presentation by National Security Staff on administration cybersecurity priorities,
—OMB presentation on current and planned policy for cybersecurity and discussion,
—Presentation on how to prevent Distributed Denial of Service Attacks and discussion,
—Discussion of the NIST national vulnerability database reference materials,
—Panel discussion/presentation on National Institute of Standards and Technology Internet of Things Cybersecurity Program,
—Discussion on Ransomware Threat Activity, and
—Updates on NIST Information Technology Laboratory.

Note that agenda items may change without notice. The final agenda will be posted on the Web site indicated above. Seating will be available for the public and media. Pre-registration is not required to attend this meeting.

*Public Participation:* The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Wednesday, June 29, 2017, between 4:00 p.m. and 4:30 p.m.). Speakers will be selected on a first-come, first served basis. Each speaker will be limited to five minutes. Questions from the public will not be considered during this period. Members of the public who are interested in speaking are requested to contact Matthew Scholl at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930.

**Kevin Kimball,**

*Chief of Staff.*

[FR Doc. 2017–11511 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF463**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday, and Thursday, June 20, 21, and 22, 2017, beginning at 9 a.m. on June 20, 8:30 a.m. on June 21, and 8:30 a.m. on June 22.

**ADDRESSES:** The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone: (207) 775–2311; online at *http://www.innbythebay.com.*

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

**SUPPLEMENTARY INFORMATION:**

#### Agenda

*Tuesday, June 20, 2017*

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and the Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission and the U.S Coast Guard. Following these reports, the Council will hear from its Whiting Committee, which will provide a brief progress report on Amendment 22 to the Northeast Multispecies Fishery Management Plan (FMP). The amendment is being developed to potentially limit access to the small-mesh multispecies fishery. Next, the Council will review and discuss the status of Amendment 6 to the Monkfish FMP. This amendment initially was intended to consider potential catch share management approaches for the monkfish fishery. The Council also will discuss and approve research priorities for the Monkfish Research Set-Aside Program. The Groundfish Committee report then will commence with a preview of the extensive afternoon agenda. Discussion of the first agenda item potentially could begin prior to lunch. For this item, the Council will receive a summary of the scoping comments for Groundfish Monitoring Amendment 23 and discuss the amendment's purpose and need, as well as the likely range of alternatives.

Following the lunch break, the Council will resume the groundfish monitoring discussion if necessary and spend the remainder of the afternoon on groundfish. The Council will initiate Framework Adjustment 57 to the Northeast Multispecies FMP, which will include: (1) 2018–2020 fishery specifications and other management measures; (2) 2018 total allowable catches (TACs) for U.S./Canada stocks of Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder; (3) Atlantic halibut accountability measures (AMs); and (4) recreational management measures. The Council will review a draft letter with comments on the Marine Recreational Information Program Strategic Plan. Finally, the Council will consider comments on the interim final rule for 2017 and 2018 Sector Operations Plans, including whether measures or restrictions should be recommended for Sector IX due to misreporting by sector vessels. The Council then will adjourn for the day.

*Wednesday, June 21, 2017*

The second day of the meeting will begin with a presentation on NMFS's

Stock Assessment Improvement Plan (SAIP), which will be immediately followed by a presentation on NMFS's guidance regarding the use of Best Scientific Information Available (BSIA). The Scientific and Statistical Committee (SSC) then will provide: (1) Comments on both the SAIP and BSIA; (2) comments on the Council's draft five-year research recommendations; and (3) a progress report on terms of reference for operational stock assessments when models are not feasible. The Council will discuss and consider the SSC's comments on NMFS's SAIP and BSIA guidance. Next, the Council will receive an Ecosystem-Based Fishery Management Report with an update on developing a worked example of harvest control rules for ecosystem management. This item will be followed by the Skate Committee report. The Council is scheduled to: (1) Take final action on Framework Adjustment 4 to the Northeast Skate Complex FMP to modify the skate bait trigger and possession limits currently in place for the fishery; and (2) initiate Framework Adjustment 5 to allow barndoor skate landings and develop fishing year 2018–2019 specifications. Members of the public then will be able to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes.

After a lunch break, the Scallop Committee first will present a report on the Limited Access General Category (LAGC) Individual Fishing Quota Five-Year Review. The Council then will approve research priorities for the 2018–2019 Scallop RSA Program. Next, the Council will receive a progress report on the development of Framework Adjustment 29, which includes: (1) Fishery specifications for the 2018 fishing year and default specifications for 2019; (2) flatfish AMs for the scallop fishery; (3) Northern Gulf of Maine (NGOM) Management Area issues; and (4) Closed Area I Scallop Access Area modifications to be consistent with pending habitat area revisions. Finally, the Council will discuss and potentially request a control date to address movement between the LAGC NGOM and LAGC incidental permit categories. The day will end with a NMFS presentation and update on the Fishery Dependent Data Visioning Project.

*Thursday, June 22, 2017*

The third day of the meeting will begin with an overview of draft alternatives for a Standardized Bycatch Reporting Methodology omnibus framework adjustment that is being developed to address assigning at-sea observers to the lobster pot fleet in an unbiased manner through the Northeast Fishery Observer Program. The Council then will hold a Habitat Committee meeting as a Committee of the Whole to review public comments on the Omnibus Deep-Sea Coral Amendment and develop final recommendations for Council consideration. Once the Committee of the Whole adjourns, the Habitat Committee report will get underway, starting with the Council taking final action on the Coral Amendment. Also under habitat, the Council will review and approve comments to the Department of the Interior on: (1) National monument designations under the Antiquities Act of 1906, including the Northeast Canyons and Seamounts Marine National Monument; and (2) potential environmental effects of offshore oil development on the Atlantic Outer Continental Shelf.

Following a lunch break, the Council may resume the habitat discussion if necessary. Then, the Council will develop comments on NMFS's Draft Council Conflict of Interest Policy Directives. The Council next will review Magnuson-Stevens Fishery Conservation and Management Act reauthorization legislation and potentially develop Council positions on the draft legislation. The Council will close out the meeting with ''other business.''

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 30, 2017.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–11477 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF463**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council, NEFMC) will hold a three-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Tuesday, Wednesday, and Thursday, June 20, 21, and 22, 2017, beginning at 9 a.m. on June 20, 8:30 a.m. on June 21, and 8:30 a.m. on June 22.

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**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

*Tuesday, June 20, 2017*

After introductions and brief announcements, the meeting will begin with reports from the Council Chairman and Executive Director, NMFS's Regional Administrator for the Greater Atlantic Regional Fisheries Office (GARFO), liaisons from the Northeast Fisheries Science Center (NEFSC) and Mid-Atlantic Fishery Management Council, representatives from NOAA General Counsel and the Office of Law Enforcement, and staff from the Atlantic States Marine Fisheries Commission and the U.S Coast Guard. Following these reports, the Council will hear from

its Whiting Committee, which will provide a brief progress report on Amendment 22 to the Northeast Multispecies Fishery Management Plan (FMP). The amendment is being developed to potentially limit access to the small-mesh multispecies fishery. Next, the Council will review and discuss the status of Amendment 6 to the Monkfish FMP. This amendment initially was intended to consider potential catch share management approaches for the monkfish fishery. The Council also will discuss and approve research priorities for the Monkfish Research Set-Aside Program. The Groundfish Committee report then will commence with a preview of the extensive afternoon agenda. Discussion of the first agenda item potentially could begin prior to lunch. For this item, the Council will receive a summary of the scoping comments for Groundfish Monitoring Amendment 23 and discuss the amendment's purpose and need, as well as the likely range of alternatives.

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*Thursday, June 22, 2017*

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Following a lunch break, the Council may resume the habitat discussion if necessary. Then, the Council will develop comments on NMFS's Draft Council Conflict of Interest Policy Directives. The Council next will review Magnuson-Stevens Fishery Conservation and Management Act reauthorization legislation and potentially develop Council positions on the draft legislation. The Council will close out the meeting with ''other business.''

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

## Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 31, 2017.

**Jeffrey N. Lonergan,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–11556 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XF462**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of cancellation of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) has cancelled the public meeting of its Whiting Committee and Advisory Panel that was scheduled for Wednesday, June 14, 2017, at 9:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The notice published in the **Federal Register** on May 31, 2017 (82 FR 24944). The meeting will be rescheduled at a later date and announced in the **Federal Register**.

Dated: May 31, 2017.

**Jeffrey N. Lonergan,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2017–11558 Filed 6–2–17; 8:45 am]

**BILLING CODE 3510–22–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2017–0013]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting a new information collection, titled, ''Debt Collection Quantitative Disclosure Testing.''

**DATES:** Written comments are encouraged and must be received on or before August 4, 2017 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by the title of the information collection, Office of Management and Budget (OMB) Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Consumer Financial Protection Bureau (Attention: PRA Office), 1275 First Street NE., Washington, DC 20002.

*Please note that comments submitted after the comment period will not be accepted.* In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

**FOR FURTHER INFORMATION CONTACT:** Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9575, or email: *CFPB_PRA@cfpb.gov. Please do not submit comments to this mailbox.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Debt Collection Quantitative Disclosure Testing.

*OMB Control Number:* 3170–XXXX.

*Type of Review:* New Collection (Request for a New OMB Control Number).

*Affected Public:* Individuals and households.

*Estimated Number of Respondents:* 17,750.

*Estimated Total Annual Burden Hours:* 3,555.

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act and other Federal consumer financial laws authorize the Bureau to engage in consumer protection rule writing. The Bureau plans to seek approval from OMB to conduct a Web survey of 8,000 [1] individuals as part of the Bureau's research on debt collection disclosures. The survey will explore consumer comprehension and decision making in response to debt collection disclosure forms.

*Request for Comments:* Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

[1] The Bureau plans to administer the survey to approximately 8,000 individuals; however, in order to survey 8,000 individuals, the Bureau estimates that it will need to administer a screening instrument to approximately 17,750 individuals.

Dated: May 31, 2017.

**Darrin A. King,**

*Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.*

[FR Doc. 2017–11551 Filed 6–2–17; 8:45 am]

**BILLING CODE 4810–AM–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 17–C0004]**

### Kawasaki Heavy Industries, Ltd.; Kawasaki Motors Corp., U.S.A.; and Kawasaki Motors Manufacturing Corp., U.S.A., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A., containing a civil penalty in the amount of five million, two hundred thousand dollars ($5,200,000), within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 20, 2017.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 17–C0004, Office of the Secretary, Consumer Product Safety

Commission, 4330 East-West Highway, Room 820, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Philip Z. Brown, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7645.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.[1]

Dated: May 31, 2017.

**Todd A. Stevenson,**

*Secretary.*

**UNITED STATES OF AMERICA**

**CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of: Kawasaki Heavy Industries, LTD.; Kawasaki Motors Corp., U.S.A.; and Kawasaki Motors Manufacturing Corp., U.S.A.

CPSC Docket No.: 17–C0004

**SETTLEMENT AGREEMENT**

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (''CPSA'') and 16 C.F.R. § 1118.20, Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. (collectively, ''Kawasaki''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order resolve staff's charges set forth below.

*THE PARTIES*

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues this Order under the provisions of the CPSA.

3. Kawasaki Heavy Industries, Ltd. (''KHI'') is a corporation, organized and existing under the laws of Japan, with its principal place of business in Japan.

4. Kawasaki Motors Corp., U.S.A. (''KMC'') is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Foothill Ranch, CA. KMC is a wholly-owned subsidiary of KHI.

5. Kawasaki Motors Manufacturing Corp., U.S.A. (''KMM'') is a corporation, organized and existing under the laws of the state of Nebraska, with its principal place of business in Lincoln, NE. KMM is a wholly-owned subsidiary of KHI.

*STAFF CHARGES*

6. Between October 2011 and December 2015, Kawasaki manufactured, distributed, and offered for sale in the United States approximately 11,000 model year 2012 and 2013 Teryx4 750 4x4s (''Teryx4 750'') and approximately 19,500 2014–2016 model year Teryx4 800 4×4s (''Teryx4 800'') and Teryx 800 4×4s (''Teryx 800'') (collectively, ''Teryxs'' or ''Subject Products''). The Teryxs are four-wheel recreational off-highway vehicles that have automotive style controls and seating for two or four persons, depending on model type.

7. KMM manufactures and assembles the Subject Products, which are then sold to KMC for distribution.

8. KMC is responsible for, among other things, the distribution, marketing, and Quality Assurance of the Subject Products in the United States.

9. KHI is primarily responsible for the design, development, and engineering of the Subject Products. KHI retains ultimate control over the operations of KMC and KMM, including retaining recall authority.

10. The Teryxs are a ''consumer product,'' ''distribut[ed] in commerce,'' as those terms are defined or used in sections 3(a)(5) and (8) of the CPSA, 15 U.S.C. § 2052(a)(5) and (8). Kawasaki is a ''distributor'' or a ''manufacturer'' of the Teryxs, as such terms are defined in section 3(a)(7) and (11) of the CPSA, 15 U.S.C. § 2052(a)(7) and (11).

*Violation of CPSA Section 19(a)(4)*

11. The Teryxs contain a defect which could create a substantial product hazard and create an unreasonable risk of serious injury because sticks or other debris can break through the Teryxs' floor board and protrude into the foot rest area, posing an injury hazard to the operator and front passenger.

12. Between April 2012 and July 2014, Kawasaki received more than 400 incident reports of Teryx4 750 floorboards cracking or breaking during normal operation due to impact with, or penetration by, debris from outside the vehicle. At least three of the incident reports resulted in injuries to consumers, including one serious injury.

13. In April 2012, Kawasaki began an investigation into the Teryx4 750 incidents. In October 2012, Kawasaki approved a design change to the Teryx4 750. The design change consisted of a metal strike plate to address the hazard and was implemented on Teryx4 750 models beginning in early 2013.

14. In May 2013, Kawasaki stopped manufacturing the Teryx4 750 and began manufacturing the Teryx 800 and Teryx4 800.

15. In December 2013, in anticipation of production for the 2015 model year, Kawasaki approved an additional design change. This design change involved enhanced floorboard guards for implementation on the 2015 model year Teryx 800 and Teryx4 800.

16. Kawasaki did not immediately inform the Commission under 15 U.S.C. § 2064(b) regarding the defect and risk posed by the Teryx4 750 and did not file a Full Report as required by 16 C.F.R. § 1115.13(d) until July 9, 2014.

17. Kawasaki and the Commission jointly announced a recall of approximately 11,000 Teryx4 750s on July 30, 2014.

18. Between July 2013 and August 2015, Kawasaki received more than 150 incident reports of Teryx4 800 or Teryx 800 floor boards cracking or breaking during normal operation due to impact with, or penetration by, debris from outside the vehicle. At least three of the incident reports resulted in injuries to consumers, including two serious injuries.

19. Kawasaki did not immediately inform the Commission under 15 U.S.C. § 2064(b) regarding the defect and risk posed by the Teryx4 800 and Teryx 800 and did not file a Full Report as required by 16 C.F.R. § 1115.13(d) until August 19, 2015.

20. Kawasaki and the Commission jointly announced a recall of approximately 19,500 Teryx4 800s and Teryx 800s on December 15, 2015.

21. Despite having information reasonably supporting the conclusion that the Teryxs contained a defect and created an unreasonable risk of serious injury, Kawasaki did not immediately inform the Commission of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

22. Because the information in Kawasaki's possession constituted actual and presumed knowledge, Kawasaki knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term ''knowingly'' is

[1] The Commission voted (4–1) to provisionally accept the Settlement Agreement and Order regarding Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. Commissioner Adler, Commissioner Kaye, Commissioner Robinson and Commissioner Mohorovic voted to provisionally accept the Settlement Agreement and Order. Acting Chairman Buerkle voted to reject the Settlement Agreement and Order.

defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

23. Pursuant to Section 20 of the CPSA, 15 U.S.C. § 2069, Kawasaki is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

*Violation of CPSA Section 19(a)(13)*

24. Kawasaki's July 9, 2014, Full Report reported a single incident and an unspecified number of injuries related to the Subject Products' floorboards. The Full Report did not identify more than 400 similar incidents involving the Subject Products about which Kawasaki had actual or presumed knowledge, and excluded any incidents relating to the Teryx4 800 and Teryx 800. This omission constitutes a material misrepresentation under section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

25. Kawasaki's misrepresentation impeded CPSC staff's investigation into the hazard posed by the Subject Products' floorboards and Kawasaki's proposed repair, and hampered staff's ability to accurately communicate the prevalence of the hazard to the public.

26. By knowingly making a material misrepresentation to an officer or employee of the CPSC in the course of an investigation under the CPSA, Kawasaki knowingly violated section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d). Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Kawasaki is subject to civil penalties for its knowing violation of section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13).

*RESPONSE OF KAWASAKI*

27. The signing of this Agreement does not constitute an admission in any respect by Kawasaki of the staff charges, set forth above in paragraphs 6 through 26, including, but not limited to, that: (a) the Teryx4 750, Teryx4 800, and Teryx 800 contained a defect which could create a substantial product hazard and created an unreasonable risk of serious injury; (b) Kawasaki failed to inform the Commission of any reportable issues related to the Teryxs in a timely manner, in accordance with sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4); (c) Kawasaki failed to furnish information as required by the statute (sections 15(b)(3) and (4), 15 U.S.C. §§ 2064(b)(3) and (4)), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4); and (d) there was any ''knowing'' violation of the CPSA as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

28. The Teryx4 750, Teryx4 800, and Teryx 800 are side-by-side recreational off-highway vehicles which are used in a variety of challenging off-road environments where breakage of various parts, including floor boards, can occur.

29. Kawasaki conducted a reasonable and diligent investigation of reported incidents of floor board breakage, including the smaller number of reported instances of stick penetration and the handful of reports of injury. Due to the nature of the products and the variety of ways and environments in which they are used, incident reports can be difficult to evaluate, since use of the Teryx4 750, Teryx4 800, and Teryx 800, like all side-by-side recreational off-highway vehicles, involves the possibility of parts breakage.

30. The voluntary recalls of the Teryx4 750, Teryx4 800, and Teryx 800 and related reporting to the Commission under section 15(b) of the CPSA, 15 U.S.C. § 2064(b), were conducted by Kawasaki out of an abundance of caution and without having determined or concluded that the Teryx4 750, Teryx4 800, and Teryx 800 contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury. Kawasaki may submit a corrective action plan to the Commission without admitting that either reportable information or a substantial product hazard exists. *See* 16 C.F.R. § 1115.20(a)(1)(xiii). Kawasaki also makes design changes to its products to address customer satisfaction.

31. Kawasaki denies the staff charges that Kawasaki committed a material misrepresentation by omission in the July 9, 2014 Full Report in violation of section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13), and further denies that Kawasaki committed a ''knowing'' violation of section 19(a)(13) as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

32. Pursuant to section 20(a)(1) of the CPSA, 15 U.S.C. § 2069(a)(1), the amount of the agreed civil penalty which can be attributable to the claim of material misrepresentation by omission under section 19(a)(13) of the CPSA, 15 U.S.C. § 2068(a)(13), cannot exceed $100,000.

33. Kawasaki believes that it did nothing wrong in this matter and that it complied with the CPSA in all respects. Kawasaki disputes the staff's allegations that Kawasaki had information that the Teryxs contained a defect which could create a substantial product hazard and created an unreasonable risk of injury. Kawasaki believes that it informed the Commission of any reportable issues regarding the Teryxs in a timely manner and furnished information to CPSC as required by the CPSA. Kawasaki does not believe that it knowingly violated the CPSA as that term is defined in the statute.

34. Pursuant to paragraphs 43 through 45, Kawasaki will maintain its program for current and future compliance with the CPSA.

35. Kawasaki enters into this Agreement in order to settle this matter without the delay and unnecessary expense of litigation.

*AGREEMENT OF THE PARTIES*

36. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over Kawasaki.

37. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Kawasaki, or a determination by the Commission, that Kawasaki violated the CPSA's reporting requirements or made material misrepresentations to an officer or employee of the Commission.

38. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, Kawasaki shall pay a civil penalty in the amount of five million, two hundred thousand dollars ($5,200,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via: *http://www.pay.gov,* for allocation to, and credit against, the payment obligations of Kawasaki under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

39. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by Kawasaki to the United States, and interest shall accrue and be paid by Kawasaki at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter ''Default Payment Amount'' and ''Default Interest Balance''). Kawasaki shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other

rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and Kawasaki agrees not to contest, and hereby waives and discharges, any defenses to any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. Kawasaki shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

40. After staff receives this Agreement executed on behalf of Kawasaki, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 C.F.R. § 1118.20(f).

41. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) Commission's final acceptance of this Agreement and service of the accepted Agreement upon Kawasaki, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

42. Effective upon the later of: (i) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon Kawasaki, and (ii) the date of issuance of the final Order, for good and valuable consideration, Kawasaki hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether Kawasaki failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

43. Kawasaki shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm, and which shall contain the following elements: (i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury is referenced; (ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary; (iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise; (iv) the Firm's senior management responsibility for, and general board oversight of, CPSA compliance; and (v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon request.

44. Kawasaki shall maintain and enforce a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by Kawasaki: (i) information required to be disclosed by Kawasaki to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to Kawasaki's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, Kawasaki's ability to record, process and report to the Commission in accordance with applicable law.

45. Upon reasonable request of staff, Kawasaki shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. Kawasaki shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate Kawasaki's compliance with the terms of the Agreement.

46. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

47. Kawasaki represents that the Agreement: (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of Kawasaki, enforceable against Kawasaki in accordance with its terms. Kawasaki will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by Kawasaki pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of Kawasaki represent and warrant that they are duly authorized by Kawasaki to execute the Agreement.

48. The signatories represent that they are authorized to execute this Agreement.

49. The Agreement is governed by the laws of the United States.

50. The Agreement and the Order shall apply to, and be binding upon, Kawasaki and each of its successors, transferees, and assigns; and a violation of the Agreement or Order may subject Kawasaki, and each of its successors, transferees, and assigns, to appropriate legal action.

51. The Agreement and the Order constitute the complete agreement between the parties on the subject matter contained therein.

52. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

53. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

54. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Kawasaki agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

KAWASAKI HEAVY INDUSTRIES, LTD.

Dated: May 12, 2017

By: _____

Hideto Yoshitake,

*General Manager and Associate Officer.*

KAWASAKI MOTORS CORP., U.S.A.

Dated: May 12, 2017

By: _____

Yoshitaka Tamura,

*President and Chief Executive Officer.*

KAWASAKI MOTORS MANUFACTURING CORP., U.S.A.

Dated: May 12, 2017

By: _____

Masanobu Kurushima,

*President.*

Dated: May 16, 2017

By: _____

Michael A. Wiegard, Esq.,

*Eckert Seamans Cherin & Mellott, LLC Counsel to Kawasaki.*

U.S. CONSUMER PRODUCT SAFETY COMMISSION

Mary T. Boyle,

*General Counsel.*

Mary B. Murphy,
Assistant General Counsel.

Dated: May 22, 2017

By: _____

Philip Z. Brown,

*Trial Attorney, Division of Compliance, Office of the General Counsel*

**UNITED STATES OF AMERICA CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of: KAWASAKI HEAVY INDUSTRIES, LTD.; KAWASAKI MOTORS CORP., U.S.A.; and KAWASAKI MOTORS MANUFACTURING CORP., U.S.A.

CPSC Docket No.: 17–C0004

**ORDER**

Upon consideration of the Settlement Agreement entered into between Kawasaki Heavy Industries, Ltd., Kawasaki Motors Corp., U.S.A., and Kawasaki Motors Manufacturing Corp., U.S.A. (collectively, ''Kawasaki''), and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over Kawasaki, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

**ORDERED** that the Settlement Agreement be, and is, hereby, accepted; and it is

**FURTHER ORDERED** that Kawasaki shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of five million, two hundred thousand dollars ($5,200,000) within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of Kawasaki to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Kawasaki at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b). If Kawasaki fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 31st day of May, 2017.

By Order of the Commission:

Todd A. Stevenson, Secretary,

U.S. Consumer Product Safety Commission.

[FR Doc. 2017–11567 Filed 6–2–17; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF ENERGY

### Request for Information (RFI): Review of Draft Version of DOE Energy-Water Nexus State Policy Database

**AGENCY:** Office of Energy Policy and Systems Analysis (EPSA), Department of Energy (DOE).

**ACTION:** Notice of request for information.

**SUMMARY:** The Department of Energy (DOE) gives notice of a Request for Information (RFI): ''Review of Draft Version of DOE Energy-Water Nexus State Policy Database.'' This RFI seeks review and feedback from stakeholders on the draft version of the DOE Energy-Water Nexus State Policy Database, including over 1,700 state-level water policies that affect energy systems. The database is being developed by DOE's Office of Energy Policy and Systems Analysis (DOE–EPSA). The draft or ''beta'' version of the database is presented as a web tool at *http://energywaterpolicy.org.* Categories of policies in the database include surface water rights; groundwater rights; water discharge regulations for power plant cooling water effluent, stormwater, and wastewater from oil and gas production; Underground Injection Control (UIC) program regulations; state water plans; regional watershed commissions; reservoir and river operations; and integrated energy and water policies. The goals of the database are to facilitate improved policy analysis, modeling, visualization, and communication by states, industry, utilities, academia, federal agencies, and other stakeholders.

**DATES:** Written comments and information are requested on or before August 4, 2017.

**ADDRESSES:** Interested persons are encouraged to submit comments, which must be submitted electronically to *EPSA.Database@hq.doe.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be sent to Samuel Bockenhauer, U.S. Department of Energy, Office of Energy Policy and Systems Analysis, 1000 Independence Avenue SW., Washington, DC 20585. Email: *samuel.bockenhauer@hq.doe.gov.* Phone: (202) 586–9016.

**SUPPLEMENTARY INFORMATION:**

#### Background

Present-day energy and water systems are in many cases interconnected. Water is used in most phases of energy production and electricity generation. Energy is required to extract, convey, and deliver water of appropriate quality for diverse human uses, and then again to treat wastewaters prior to their return to the environment. Historically, energy and water systems have been developed, managed, and regulated independently and without significant acknowledgement of the connections between them. The energy and water policy landscape is thus highly fragmented, which can make it difficult for industry, utilities, government, and other stakeholder groups to effectively balance energy and water goals.

Furthermore, much of the authority for water policy lies at the level of individual states. For example, allocation of water rights and permitting for water discharge are managed primarily at the state level. The particularly complex and fragmented nature of water policies affecting energy systems, as well as their variation across different states, suggests that a centralized, public database of water policies affecting energy systems could enable enhanced policy analysis, modeling, visualization, and communication by states, industry, utilities, academia, federal agencies, and other stakeholders.

#### Purpose

The purpose of this RFI is to solicit feedback from industry, utilities, academia, research laboratories, government agencies, and other stakeholders on the draft version of the Energy-Water Nexus State Policy Database available at *http://energywaterpolicy.org.* Regarding the draft version of the Energy-Water Nexus State Policy Database, neither the United States Government nor any

agency thereof, nor any of their employees, nor any of their contractors, subcontractors or their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or any third party's use or the results of such use of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference in the draft version of the Energy-Water Nexus State Policy Database to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof or its contractors or subcontractors. This RFI is solely an effort to gather information from stakeholders to help inform DOE–EPSA on whether a finalized version of such a database would be useful and how it might be designed.

**Request for Information Categories and Questions**

DOE is particularly interested in receiving comments and data on the following:

1. Quality and Completeness of Information. Are the policy descriptions accurate and complete? Are they current? Are the key functional pieces of the policy easily accessible? What additional information would be useful? How could the descriptions be streamlined? What other policies should be included?

2. Functionality. How could the functionality be improved in areas such as user interface, search functionality, sorting functionality, site structure, etc.?

3. Uses. How might you or your organization use the database? What key important questions could the database help to answer? What visualizations might you or your organization consider using the database to develop?

4. Connection to Other Data Sources or Initiatives. Are there other data sources in industry, government, academia, or other sectors that could be connected to this database? If so, what are these data sets and how might they be beneficially connected or coordinated with the database?

5. Users. Which stakeholder groups—including groups in industry, government, academia, etc.—might find the database most useful and for what purpose?

6. Maintenance. How should policy developments be tracked and at what frequency to keep the database current and useful?

**Request for Information Response Guidelines**

Responses to this RFI must be submitted electronically to *EPSA.Database@hq.doe.gov* no later than 11:59 p.m. (ET) on August 4, 2017. Responses must be provided as attachments to an email. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Responses must be provided as a Microsoft Word (.docx) or Microsoft Excel (.xslx) attachment to the email. Only electronic responses will be accepted.

Please identify your answers by responding to a specific question or topic if applicable. Respondents may answer as many or as few questions as they wish. DOE–EPSA will not respond to individual submissions or publish publicly a compendium of responses. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

Respondents are requested to provide the following information at the start of their response to this RFI:

- Company/institution name;
- Company/institution contact;
- Contact's address, phone number, and email address.

**Confidential Business Information**

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Issued in Washington, DC, on May 9, 2017.

**Carol Battershell,**

*Acting Director, Office of Energy Policy and Systems Analysis.*

[FR Doc. 2017–11547 Filed 6–2–17; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### U.S. Energy Information Administration

### Agency Information Collection Extension

**AGENCY:** U.S. Energy Information Administration (EIA), Department of Energy.

**ACTION:** Notice and request for OMB review and comment.

**SUMMARY:** The EIA has submitted an information collection request to the Office of Management and Budget (OMB) for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its CIPSEA Confidentiality Pledge Revision, OMB Control Number 1905–0211. The proposed collection will make permanent the modification to the confidentiality pledge that was approved on January 12, 2017, under the emergency clearance under OMB Control Number 1905–0211.

**DATES:** Comments regarding this proposed information collection must be received on or before July 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to *Jacob.bournazian@eia.gov* or Jacob Bournazian, U.S. Energy Information Administration, Mail Stop EI–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 (Email is preferred).

**FOR FURTHER INFORMATION CONTACT:** Jacob Bournazian, U.S. Energy Information Administration, 1000 Independence Avenue SW.,

Washington, DC 20585, phone: 202–586–5562 (this is not a toll-free number), email: *jacob.bournazian@eia.gov.* Because of delays in the receipt of regular mail related to security screening, respondents are encouraged to use electronic communications. The survey forms and instructions are available on the Internet at *https://www.eia.gov/survey/.*

**SUPPLEMENTARY INFORMATION:** This information collection request contains: (1) OMB No. 1905–0211; (2) Information Collection Request Title: CIPSEA Confidentiality Pledge Revision; (3) Type of Request: Three-year extension; (4) Purpose: Under 44 U.S.C. 3506(e), and 44 U.S.C. 3501 (note), EIA revised the confidentiality pledge(s) it provides to respondents for surveys that protect information under the Confidential Information Protection and Statistical Efficiency Act (44 U.S.C. 3501 (note)) (CIPSEA). EIA's CIPSEA confidentiality pledge needed to be modified to be consistent with provisions of the Federal Cybersecurity Enhancement Act of 2015 (Pub. L. 114–11, Division N, Title II, Subtitle B, Sec. 223), which permit and require the Secretary of the Department of Homeland Security (DHS) to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. In 2004, EIA's original CIPSEA confidentiality pledge stated that the information respondents provide will be seen only by EIA personnel or their sworn agents, and be used only for statistical purposes. As part of the Consolidated Appropriations Act for Fiscal Year 2016 signed on December 17, 2015, the Congress included the Federal Cybersecurity Enhancement Act of 2015 (Pub. L. 114–11, Division N, Title II, Subtitle B, Sec. 223). This Act, among other provisions, permits and requires DHS to provide Federal civilian agencies' information technology systems with cybersecurity protection for their Internet traffic. The technology currently used to provide this protection against cyber malware is known as Einstein 3A; it electronically searches Internet traffic in and out of Federal civilian agencies in real time for malware signatures. When such a signature is found, the Internet packets that contain the malware signature are moved to a secured area for further inspection by DHS personnel. Because it is possible that such packets entering or leaving a statistical agency's information technology system may contain a small portion of confidential statistical data, statistical agencies no longer promise their respondents that their responses will be seen only by statistical agency personnel or their sworn agents. However, EIA does promise, in accordance with provisions of the Federal Cybersecurity Enhancement Act of 2015, that such monitoring will be used only to protect information and information systems from cybersecurity risks, thereby, in effect, providing stronger protection to the integrity of the respondents' submissions. Since it is possible that DHS personnel may see some portion of those confidential data in the course of examining the suspicious Internet packets identified by Einstein 3A sensors, EIA revised its confidentiality pledge on January 12, 2017, under an emergency clearance, to reflect this process change. The submission of this request to OMB makes the change in EIA's CIPSEA confidentiality pledge permanent for all surveys that EIA protects under the CIPSEA statute. Therefore, EIA provides this notice to alert the public of this permanent change in its confidentiality pledge in an efficient and coordinated manner.

**Statutory Authority:** Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified as 15 U.S.C. 772(b) and the DOE Organization Act of 1977, Pub. L. 95–91, codified at 42 U.S.C. 7101 *et seq.*

Issued in Washington, DC, on May 8, 2017.

**Nanda Srinivasan,**

*Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.*

[FR Doc. 2017–11549 Filed 6–2–17; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP16–496–000]**

### Tennessee Gas Pipeline Company, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Lone Star Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Lone Star Project, proposed by Tennessee Gas Pipeline Company, LLC (Tennessee) in the above-referenced docket. Tennessee requests authorization to construct and operate two new compressor stations in San Patricio and Jackson Counties, Texas.

The EA assesses the potential environmental effects of construction and operation of the Lone Star Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed Lone Star Project includes the following facilities:

- One new bi-directional enclosed Compressor Station 3A in San Patricio County, Texas, consisting of one 10,915 horsepower (hp) International Organization for Standardization (ISO) rated Solar Taurus 70 turbine/compressor unit and associated appurtenances; and
- one new bi-directional enclosed Compressor Station 11A in Jackson County, Texas, consisting of one 20,500-hp ISO rated Solar Titan 130 turbine/compressor unit and appurtenances.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups, including commenters; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before June 26, 2017.

For your convenience, there are three methods you can use to file your comments with the Commission. In all instances please reference the project docket number (CP16–496–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at 202–502–8258 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an

easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP16–496). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

[1] See the previous discussion on the methods for filing comments.

Dated: May 26, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11532 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

**NYISO Electric System Planning Working Group Meeting**

June 7, 2017, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2017-06-07.*

**NYISO Management Committee Meeting**

June 13, 2017, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2017-06-13.*

**NYISO Business Issues Committee Meeting**

June 14, 2017, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2017-06-14.*

**NYISO Operating Committee Meeting**

June 15, 2017, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2017-06-15.*

**NYISO Electric System Planning Working Group Meeting**

June 22, 2017, 10:00 a.m.–4:00 p.m. (EST).

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2017-06-22.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

*New York Independent System Operator, Inc.,* Docket No. ER13–102.

*New York Independent System Operator, Inc.,* Docket No. ER15–2059.

*New York Transco, LLC,* Docket No. ER15–572.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: May 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11539 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file

associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

| Docket No. | File date | Presenter or requester |
|---|---|---|
| **Prohibited** | | |
| 1. CP15–558–000 | 5–19–2017 | Medical Society of New Jersey. |
| **Exempt** | | |
| 1. CP15–93–000 | 5–15–2017 | Ohio Environmental Protection Agency. |
| 2. CP15–558–000 | 5–15–2017 | Newton Township, Bucks County, Pennsylvania. |
| 3. P–2100–000 | 5–22–2017 | California State Legislature.[1] |
| 4. CP15–558–000 | 5–23–2017 | Upper Makefield Township, Bucks County, Pennsylvania. |
| 5. CP16–22–000 | 5–22–2017 | City of Bowling Green, Ohio.[2] |
| 6. CP15–138–000 | 5–24–2017 | U.S. House Representative Lou Barletta. |

[1] Assemblyman James Gallaher and Senator Jim Nielsen.
[2] Mayor Richard A. Edwards and Council Member Michael Aspacher.

Dated: May 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11538 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 10481–067, Project No. 9690–112, and Project No. 10482–117]**

## Eagle Creek Hydro, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the PAD and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for New Licenses and Commencing Pre-filing Process.

b. *Project Nos.:* 9690–112, 10481–067, 10482–117.

c. *Dated Filed:* March 30, 2017.

d. *Submitted By:* Eagle Creek Hydro Power, LLC, Eagle Creek Water Resources, LLC, and Eagle Creek Land Resources, LLC (collectively referred to as Eagle Creek Hydro).

e. *Name of Projects:* Rio Hydroelectric Project (P–9690–112), Mongaup Falls Hydroelectric Project (P–10481–067), and Swinging Bridge Hydroelectric Project (P–10482–117).

f. *Location:* The three projects are on the Mongaup River, in Sullivan County, New York and a portion of the Rio Project is located in Orange County, New York. The three projects occupy no federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Applicant Contact:* Robert A. Gates, EVP Operations, Eagle Creek Renewable Energy, LLC, 116 North State Street, P.O. Box 167, Neshkoro, WI 54960–0167, (973) 998–8400, *bob.gates@eaglecreekre.com.*

i. *FERC Contact:* Quinn Emmering at (202) 502–6382 or email at *quinn.emmering@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Eagle Creek Hydro as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Eagle Creek Hydro filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number(s) P–9690–112, P–10481–067, and/or 10482–117.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by July 29, 2017.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

**Scoping Meetings**

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

*Daytime Scoping Meeting*

*Date:* Thursday, June 22, 2017.
*Time:* 9:00 a.m.
*Location:* Monticello Firehouse, 23 Richardson Ave., Monticello, New York 12701.
*Phone:* (845) 794–5121.

*Evening Scoping Meeting*

*Date:* Thursday, June 22, 2017.
*Time:* 7:00 p.m.
*Location:* Monticello Firehouse, 23 Richardson Ave., Monticello, New York 12701.
*Phone:* (845) 794–5121.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

**Environmental Site Review**

The applicant and Commission staff will conduct an Environmental Site Review of the project on Wednesday, June 21, 2017, starting at 8:00 a.m. for the Swinging Bridge Project and Wednesday, June 21, 2017, starting at 1:00 p.m. for the Mongaup Falls and Rio Projects. For the site visits, Eagle Creek Hydro has made arrangements with a bus company to provide transportation from the Monticello Walmart parking lot located at 41 Anawana Lake Road, Monticello, New York 12701. Participants should park in the remote parking lot located east of the store's main parking lot, between Walmart and the Burger King located along Route 42.

Please note that the Swinging Bridge project will be visited in the morning with an hour-long break at about 12:00 p.m. After the break, the Mongaup Falls and Rio projects will be visited. No lunch is provided. Participants should make their own arrangements for lunch. Food services are available in the area.

Please RSVP Jane Manibusan at (920) 293–4628 or *Jane.manibusan@eaglecreekre.com* on or before June 12, 2017, if you plan to attend the environmental site review or have any questions.

**Meeting Objectives**

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11537 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC17–123–000

*Applicants:* American Transmission Company LLC, Wisconsin Power and Light Company.

*Description:* Application of American Transmission Company LLC, et. al. for Authority to Acquire Certain Facilities Under Section 203 of the FPA.

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5123.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* EC17–124–000.

*Applicants:* Alpha Willow LLC, Sagebrush Asset Holdings, LLC.

*Description: Application for Authorization for Disposition of Jurisdictional Facilities, Request for Confidential Treatment, and Request for Expedited Consideration of Alpha Willow LLC, et al.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5181.

*Comments Due:* 5 p.m. ET 6/16/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16–2654–003.

*Applicants:* City Point Energy Center, LLC.

*Description:* Notice of Non-Material Change in Status of City Point Energy Center, LLC.

*Filed Date:* 5/25/17.

*Accession Number:* 20170525–5319.

*Comments Due:* 5 p.m. ET 6/15/17.

*Docket Numbers:* ER17–1100–001.

*Applicants:* Cube Yadkin Transmission LLC.

*Description:* Compliance filing: Compliance Filing to be effective 3/4/2017.

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5044.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1690–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2855R3 KMEA & KCPL Meter Agent Agreement to be effective 6/1/2017.

*Filed Date:* 5/26/17.

*Accession Number:* 20170530–5001.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1691–000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: GIA & DSA MonolithSub12kV_BESS Project SA Nos. 960–961 to be effective 5/27/2017.

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5137.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1692–000.

*Applicants:* Southern California Edison Company.

*Description: § 205(d) Rate Filing: GIA & DSA SCEBESS–003 Project SA Nos. 962–963 to be effective 5/27/2017.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5138.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1693–000.

*Applicants:* Portland General Electric Company.

*Description:* § 205(d) Rate Filing: PGE11 MBR EIM to be effective 7/26/2017.

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5189.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1694–000.

*Applicants:* Southwest Power Pool, Inc.

*Description: § 205(d) Rate Filing: 1910R10 Southwestern Public Service Company NITSA NOA to be effective 5/1/2017.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5192.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1695–000.

*Applicants:* Louisville Gas and Electric Company.

*Description: § 205(d) Rate Filing: Amended and Restated EEI Interconnection Agreement to be effective 7/26/2017.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5207.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1696–000.

*Applicants:* San Diego Gas & Electric Company.

*Description: Sixth Annual Informational Filing [Cycle 6] of Fourth Transmission Owner Rate Formula rate mechanism of San Diego Gas & Electric Company.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5210.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1697–000.

*Applicants:* Kentucky Utilities Company.

*Description: § 205(d) Rate Filing: Concurrence to Amd and Restated EEI IA to be effective 7/26/2017.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5211.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1698–000.

*Applicants:* Citizens Sunrise Transmission LLC.

*Description: § 205(d) Rate Filing: Annual Operating Cost True-Up Adjustment Informational Filing to be effective 6/1/2017.*

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5220.

*Comments Due:* 5 p.m. ET 6/16/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11533 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG17–110–000.

*Applicants:* Hog Creek Wind Project, LLC.

*Description:* Notice of Self-Certification of EWG Status of Hog Creek Wind Project, LLC.

*Filed Date:* 5/26/17.

*Accession Number:* 20170526–5304.

*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* EG17–111–000.

*Applicants:* Mineral Point Energy LLC.

*Description:* Self-Certification of Exempt Wholesale Generator Status of Mineral Point Energy LLC.

*Filed Date:* 5/30/17.

*Accession Number:* 20170530–5093.

*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* EG17–112–000.

*Applicants:* Wrighter Energy LLC.

*Description:* Self-Certification of Exempt Wholesale Generator Status of Wrighter Energy LLC.

*Filed Date:* 5/30/17.

*Accession Number:* 20170530–5094.
*Comments Due:* 5 p.m. ET 6/20/17.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2964–013.
*Applicants:* Selkirk Cogen Partners, L.P.
*Description:* Notice of Non-Material Change in Status for Selkirk Cogen Partners, L.P.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5050.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER16–204–003.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Compliance filing: Tri-State Generation and Transmission Association Formula Rate Compliance Filing to be effective 1/1/2016.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5130.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER16–1720–002.
*Applicants:* Invenergy Energy Management LLC.
*Description:* Supplement to December 23, 2016 Triennial Report for the Northwest Region of Invenergy Energy Management LLC.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5141.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1381–001.
*Applicants:* AEM Wind, LLC.
*Description:* Compliance filing: Revisions to Tariff to be effective 6/7/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5124.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1699–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* § 205(d) Rate Filing: Unexecuted LGIA with Regents of the University of California (SA 344) to be effective 7/27/2017.
*Filed Date:* 5/26/17.
*Accession Number:* 20170526–5284.
*Comments Due:* 5 p.m. ET 6/16/17.

*Docket Numbers:* ER17–1700–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Wholesale Market Participation Agreement No. 4707; Queue No. AC1–199 to be effective 5/8/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5075.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1701–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Service Agreement No. 4704; Queue No. AA2–057/AA2–165 to be effective 5/3/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5079.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1703–000.
*Applicants:* New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.
*Description:* § 205(d) Rate Filing: NYISO 205 filing re: LGIA (SA2334) NYISO, NMPC & Copenhagen Wind Farm to be effective 5/15/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5098.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1704–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Wholesale Market Participation Agreement No. 4708; Queue No. AC1–200 to be effective 5/8/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5120.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1705–000.
*Applicants:* Electric Energy, Inc.
*Description:* § 205(d) Rate Filing: Revised and Restated Cost-Based Power Contract to be effective 6/1/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5121.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1706–000.
*Applicants:* ISO New England Inc., New England Power Pool Participants Committee.
*Description:* § 205(d) Rate Filing: MR1 Revisions to Permit Use of Five-Minute Revenue Quality Meter Data to be effective 8/1/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5122.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1707–000.
*Applicants:* Midcontinent Independent System Operator, Inc., ITC Interconnection LLC, Dairyland Power Cooperative.
*Description:* § 205(d) Rate Filing: 2017–05–30_SA 3013 ITC–DPC TIA to be effective 7/30/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5127.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1708–000.
*Applicants:* Alabama Power Company.
*Description:* § 205(d) Rate Filing: Blountstown NITSA and NOA Filing to be effective 5/1/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5133.
*Comments Due:* 5 p.m. ET 6/20/17.

*Docket Numbers:* ER17–1709–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Wholesale Market Participation Agreement No. 4709; Queue No. AC1–201 to be effective 5/8/2017.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5142.
*Comments Due:* 5 p.m. ET 6/20/17.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RR17–4–000.
*Applicants:* North American Electric Reliability Corp.
*Description:* Report of North American Electric Reliability Corporation of Comparisons of Budgeted to Actual Costs for 2016 for NERC and the Regional Entities.
*Filed Date:* 5/30/17.
*Accession Number:* 20170530–5129.
*Comments Due:* 5 p.m. ET 6/20/17.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 30, 2017.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2017–11534 Filed 6–2–17; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2016–0597; FRL–9961–92]**

### Chemical Data Reporting; Requirements for Inorganic Byproduct Chemical Substances; Notice of Establishment of Negotiated Rulemaking Committee; Notice of Public Meetings

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of establishment of Negotiated Rulemaking Committee and notice of public meetings.

**SUMMARY:** EPA is giving notice that it is establishing a Negotiated Rulemaking Committee (Committee) under the Negotiated Rulemaking Act (NRA). The objective of the Committee is to negotiate a proposed rule that would limit chemical data reporting requirements under section 8(a) of the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, for manufacturers of any inorganic byproduct chemical substances when such byproduct chemical substances are subsequently recycled, reused, or reprocessed. The purpose of the Committee is to conduct discussions in a good faith attempt to reach consensus on proposed regulatory language. This negotiation process is required by section 8(a)(6) of TSCA. This notice lists the stakeholder groups from which EPA plans to invite representatives to participate as members of the Committee, all of whom have been identified as having a definable stake in the outcome of the proposed requirements. This notice also announces the first two meetings of the Committee, which are open to the public.

**DATES:** The first of the Committee meetings, which are both open to the public, will be held on June 8, 2017, from 9 a.m. to 5 p.m. and on June 9, 2017, from 9 a.m. to 3:00 p.m. The second Committee meeting will be held on August 16, 2017, from 9 a.m. to 5 p.m. and on August 17, 2017, from 9 a.m. to 3:00 p.m.

**ADDRESSES:** Both meetings will be held at William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing to obtain information concerning the public meetings may contact Jonah Richmond, Designated Federal Officer (DFO), Conflict Prevention and Resolution Center, Office of General Counsel, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0210; email address: *Richmond.jonah@epa.gov.* General information about the Committee, as well as any updates concerning the meetings announced in this notice, may be found at *https://www.epa.gov/chemical-data-reporting/negotiated-rulemaking-committee-chemical-data-reporting-requirements.*

For information on access or services for individuals with disabilities, or to request accommodation for a disability, please contact the DFO, preferably at least ten days prior to the meetings to give EPA as much time as possible to process your request.

*For technical information contact:* Susan Sharkey, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; email address: *Sharkey.susan@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture (including manufacture as a byproduct chemical substance and including import) chemical substances listed on the TSCA Inventory. The following list of North American Industrial Classification System (NAICS) codes are not intended to be exhaustive, but rather provides a guide to help readers determine whether this action may apply to them:

1. Chemical manufacturers and importers (NAICS codes 325 and 324110; *e.g.,* chemical manufacturing and processing and petroleum refineries).

2. Chemical users and processors who may manufacture a byproduct chemical substance (NAICS codes 22, 322, 331, and 3344; *e.g.,* utilities, paper manufacturing, primary metal manufacturing, and semiconductor and other electronic component manufacturing).

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0597, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

## II. Background

### *A. What action is the agency taking?*

As required by the Negotiated Rulemaking Act of 1996 (NRA), EPA is giving notice that the agency is establishing a Negotiated Rulemaking Committee. The objective of this Committee is to develop a proposed rule providing for limiting chemical data reporting requirements, under TSCA section 8(a), for manufacturers of any inorganic byproduct chemical substances when such byproduct chemical substances are subsequently recycled, reused, or reprocessed. This negotiation process, which includes the establishment of a federal advisory committee, is required by TSCA section 8(a)(6), as amended by the Frank. R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act).

This Committee will be a statutory advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 9(a)(1). In accordance with Section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. App. I § 9(c), EPA prepared a charter for the establishment of the Negotiated Rulemaking Committee. Copies of the Committee's charter will be filed with the appropriate congressional committees, the Library of Congress, and available online at *https://www.epa.gov/chemical-data-reporting/negotiated-rulemaking-committee-chemical-data-reporting-requirements.* On December 15, 2016, EPA announced its intent to negotiate and establish this Committee (81 FR 90843). More information on this notice and comments received in response are in Unit VII.

This notice announces the stakeholder groups from which EPA intends to invite individuals as members of the Committee, all of whom will have been identified as having a definable stake in the outcome of the proposed requirements. EPA is also announcing the first two meetings of the Committee. These meetings have been scheduled for the dates indicated under **DATES**, and are open to the public. Under normal circumstances, a notice of the Committee meeting must be published no later than 15 days before the date of that meeting. Due to unavoidable administrative circumstances, we are publishing this notice with less than 15 days' advance notice for the first Committee meeting on June 8 and 9, 2017.

*B. What is the agency's authority for this action?*

This notice announcing EPA's establishment of a Negotiated Rulemaking Committee to negotiate a proposed regulation was developed under the authority of NRA sections 563 and 564 (5 U.S.C. 561, Pub. L. 104–320). Any proposed regulation resulting from the negotiation process would be developed under the authority of TSCA section 8 (15 U.S.C. 2607), as amended by the Lautenberg Act (Pub. L. 114–182).

*C. Chemical Data Reporting (CDR) Framework*

Under TSCA, EPA regulates the manufacture (including import), processing, distribution, use, and disposal of chemical substances in the United States. Information submitted by manufacturers (including importers) as required by CDR provides exposure-related data for chemical substances in U.S. commerce that are subject to TSCA. This information supports agency risk evaluation, risk management, and other programs; it is made publicly available, to the extent possible, while protecting information claimed as confidential business information.

Prior to 2011, CDR was known as the Inventory Update Reporting (IUR) regulation. In 1986, EPA promulgated IUR regulations under the authority of TSCA section 8(a) to collect limited information on the manufacture (including import) of organic chemical substances listed on the TSCA Inventory, thereby providing more up-to-date production volume information on the chemical substances in U.S. commerce. In 2005, EPA amended IUR regulations to require the reporting of information on inorganic chemical substances and to collect additional manufacturing, processing, and use information. EPA has since made additional changes to the reporting requirements, and in 2011 changed the name of the reporting rule to Chemical Data Reporting. CDR regulations are currently codified at 40 CFR part 711. EPA believes CDR is the only current reporting obligation under TSCA section 8(a) that is likely to affect the manufacturers of inorganic byproduct chemical substances.

Manufacturers of inorganic chemical substances first reported this information in 2006, with subsequent reporting in 2012 and 2016. Specific reporting requirements for these manufacturers were phased in, to allow for the industry to better understand the reporting requirements and for EPA to gain a better understanding of the industry.

*D. Inorganic Byproduct Chemical Substances Under CDR*

A byproduct chemical substance is a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance or mixture. 40 CFR 704.3, definition of *byproduct.* Such byproduct chemical substances may, or may not, in themselves have commercial value, but they are nonetheless produced for the purpose of obtaining a commercial advantage. 40 CFR 704.3, definition of *manufacture for commercial purposes.* Because byproduct chemical substances are manufactured for a commercial purpose, this manufacturing is reportable under CDR unless covered by a specific reporting exemption. CDR contains a specific reporting exemption for the manufacture of byproduct chemical substances limited to cases where those byproduct chemical substances are not *used* for any commercial purposes (or are only used for certain limited commercial purposes) after they are manufactured. 40 CFR 711.10(c). Inorganic byproduct chemical substances are often recycled. The recycling of a byproduct chemical substance may qualify as a commercial purpose beyond the limited commercial purposes encompassed by 40 CFR 711.10(c). If so, the exemption from a manufacturer of a byproduct chemical substance from reporting this to CDR is not applicable.

On June 22, 2016, TSCA was amended by the Lautenberg Act. TSCA now includes a requirement that EPA enter into a negotiated rulemaking, pursuant to the NRA, to develop and publish a proposed rule to limit the reporting requirements under TSCA section 8(a), for manufacturers of any inorganic byproduct chemical substances when such byproduct chemical substances, whether by the byproduct chemical substance manufacturer or by any other person, are subsequently recycled, reused, or reprocessed. The objective of the negotiated rulemaking process is to develop and publish a proposed rule by June 22, 2019. In the event the Committee reaches a consensus and a proposed rule is developed through the negotiated rulemaking process, a final rule ''resulting from such negotiated rulemaking'' must be issued by December 22, 2019. 15 U.S.C. 2607(a)(6).

**III. Facilitators**

In its Notice of Intent to Establish a Negotiated Rulemaking Committee and Negotiate a Proposed Rule (81 FR 90843, December 15, 2016), EPA stated that it was seeking a facilitator to conduct the negotiations. Christopher Moore, Ph.D., of Collaborative Decision Resources Associates, and Laura Sneeringer, of the Consensus Building Institute, have been retained for this purpose.

**IV. Committee Membership**

*A. Qualifications for Stakeholder Representatives*

The facilitators conducted extensive interviews with interested stakeholders, asking for recommendations for potential Committee members. To facilitate representative selection, the facilitators suggested qualifications, knowledge, and skills that should be possessed by representatives, which would help promote productive deliberations. These included:

- Knowledge of technical issues related to inorganic byproducts;
- Experience with CDR and inorganic byproduct reporting;
- Direct representation of a constituency or a stakeholder group as a whole, such as an industry, or as component parts, such as large or small companies;
- Not serving as external technical consultants or legal counsel without constituents;
- Authority to reach agreements and make commitments for their stakeholder group;
- Willingness and flexibility to discuss issues that will be the focus of the dialogue with parties that may have different views or interests;
- Willingness to engage in productive interest-based negotiations and avoid adversarial or legal argumentation; and
- A commitment to negotiate in good faith and strive to find solutions that will meet all parties' interests to the greatest extent possible.

*B. Represented Stakeholders*

EPA is planning to invite representatives from the following stakeholder groups to serve on the Committee:

- Inorganic chemical manufacturers and processors, including metal mining and related activities;
- Recyclers, including scrap recyclers;
- Industry advocacy groups;
- Environmental advocacy groups; and
- Federal, State, and Tribal governments.

**V. Participation by Non-Members**

*A. Attending Meetings*

EPA values public input during this process. The meetings announced in this notice will be open to the public, so interested parties may observe the meetings and communicate their views in the appropriate time and manner, as defined in each meeting's agenda. Consistent with the requirements of FACA, formal meeting materials and summaries will be available online.

*B. Oral Statements*

In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Interested parties should submit requests by email to *ecdrweb@epa.gov* one week prior to the meeting dates, in order to be placed on the list of public speakers.

*C. Written Statements*

Written statements will be accepted throughout the advisory process; however, for timely consideration, statements should be supplied by email to *ecdrweb@epa.gov* one week prior to the meeting dates. Members of the public should be aware that written comments, including personal contact information, if included, may be posted to the Committee Web site as well as placed in the EPA docket supporting this activity. Copyrighted material will not be posted without explicit permission of the copyright holder. Additionally, EPA will invite public comment on any proposed rule resulting from the Committee's deliberations.

**VI. Meeting Schedule and Agenda**

*A. Meeting Schedule*

EPA anticipates up to five Committee meetings will be held between June and October 2017, including the Committee meetings that EPA is announcing in this Notice. Committee meetings will be one and a half days each, and held in Washington, DC, unless the Committee decides otherwise. The Committee will separately announce those meetings subsequent to the meetings being announced in this notice.

*B. The First Committee Meeting*

The first Committee meeting will be held on June 8, 2017, from 9 a.m. to 5 p.m. and on June 9, 2017, from 9 a.m. to 3:00 p.m. The second Committee meeting will be held on August 16, 2017, from 9 a.m. to 5 p.m. and on August 17, 2017, from 9 a.m. to 3:00 p.m. Both meetings will be open to the public. Meeting details and agenda information will be available online at *https://www.epa.gov/chemical-data-reporting/negotiated-rulemaking-committee-chemical-data-reporting-requirements,* as well as in the EPA docket supporting this activity.

**VII. Notice of Intent To Negotiate and Response to Public Comments**

On December 15, 2016, EPA published a notice of intent to establish a Committee to negotiate a proposed rule that would limit chemical data reporting requirements under section 8(a) of TSCA, for manufacturers of any inorganic byproduct chemical substances, when such byproduct chemical substances are subsequently recycled, reused, or reprocessed (81 FR 90843). The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow.

EPA received 18 comments on the notice of intent, which can all be found in the docket for this Notice. None of the comments opposed using regulatory negotiation for this rulemaking; most endorsed the process and included requests to serve on the Committee. However, one commenter raised four substantive issues, which EPA is responding to here.

*A. EPA Should Commit Staff With Appropriate Seniority and the Authority To Negotiate for the Agency*

The commenter encouraged EPA to select representatives that are knowledgeable about the issue and have the authority to make commitments for the agency. EPA agrees. EPA will have two representatives at the table—one technical expert on CDR, and the other an EPA manager with the authority to, in consultation with other EPA officials as needed, make commitments for the agency. EPA will also have other technical experts available to answer questions about other EPA programs, as recommended by the commenter.

*B. Additional Recommendations Regarding Committee Participation*

The commenter recommended that the Small Business Administration (SBA) Office of Advocacy be represented on the Committee. Because SBA's Office of Advocacy already has multiple established processes for providing input during rulemaking, such as serving on Small Business Advocacy Review Panels that are convened under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 609(b)(3) (1980), and participating in interagency review conducted under Executive Order 12866, 58 FR 51735 (October 4, 1993), and because EPA believes it is important for the federal government to be represented as a singular entity at the table, SBA will not serve on the Committee. EPA will coordinate with SBA through the standard processes that apply to EPA rulemaking. In addition, SBA, as well as other federal agencies, will be invited to attend all Committee meetings as an observer.

*C. EPA Is Required To Propose and Finalize a Rule Regardless of the Outcome of the Negotiated Rulemaking*

The commenter believes that the Lautenberg Act requires EPA to propose and finalize a rule lessening the reporting burdens for inorganic byproducts sent for recycling, regardless of whether consensus is reached by the Committee. As EPA explained in its December 15, 2016, Notice, the agency construes its obligation to propose and finalize a rule under TSCA section 8(a)(6) as being contingent on the Committee reaching a consensus.

EPA's obligation under TSCA section 8(a)(6)(B) is to finalize a rule ''resulting from such negotiated rulemaking.'' While EPA would have authority to issue an amendment to the CDR for inorganic byproducts even if negotiation failed to achieve any consensus, such a rule would not be a rule *resulting from* the negotiated rulemaking. Accordingly, TSCA section 8(a)(6)(B) presupposes that the negotiated rulemaking process reached consensus in directing EPA to issue a final rule.

This reading is consistent with the structure of TSCA section 8(a)(6) as a whole, requiring a proposed rule within three years of the Lautenberg Act's enactment and a final rule six months later. Under the commenter's reading, if the Negotiated Rulemaking Committee could not reach any consensus to limit the reporting requirements for inorganic byproducts, EPA would still be required to come up with its own approach by June 2019 without the benefit of agreement from the interested parties. EPA can reasonably assume that such an approach would draw adverse comment from the party or parties that blocked consensus in the Negotiated Rulemaking Committee, and thus the agency would only have six months to solicit, consider, and respond to those comments before the statutorily required deadline. EPA does not believe that Congress intended for this to occur because it did not direct the agency to limit reporting requirements in any

specific way that would require a rulemaking regardless of the outcome of the negotiated rulemaking. On the contrary, Congress specifically directed that the final rule must result from the negotiated rulemaking, which will likely simplify the comment process enough to enable the agency to meet these relatively short deadlines.

By establishing the Committee in today's Notice, EPA is fulfilling the Lautenberg Act's requirement to ''enter into a negotiated rulemaking pursuant to'' the NRA to develop and publish a proposed rule. 15 U.S.C. 2607(a)(6)(A). When viewed under the lens of the statutory structure, any requirement for EPA to actually ''develop and publish'' a proposed rule must necessarily also result from consensus being reached by the Committee.

For these reasons, EPA respectfully disagrees with the commenter. If consensus cannot be reached, and there is no agreement upon which to base a proposal, then there is no further statutory obligation to issue a proposal or a final rule. However, as noted in the December 15, 2016, Notice, EPA commits to working in good faith to seek consensus on a proposal that is consistent with the legal mandate of TSCA.

*D. Definition of Consensus Should Not Require Unanimous Concurrence of the Committee*

The commenter recommended that the Committee use a definition of consensus that does not require unanimous concurrence among the Committee, citing the potential for one Committee member's veto to result in no agreement. The NRA defines consensus as unanimous concurrence, unless the Committee agrees otherwise. 5 U.S.C. 562. A unanimous concurrence definition is important in ensuring no one interest or group of interests is able to control the process. While EPA believes that unanimous concurrence is not an unreasonably high bar, particularly with the assistance of a highly skilled neutral facilitator with expertise in building consensus, the Committee has the power under the NRA to agree to another definition of consensus.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: May 24, 2017.

**Wendy Cleland-Hamnett,**

*Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2017–11570 Filed 5–31–17; 4:15 pm]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[9961–58–OEI]**

### Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Utah

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of the State of Utah's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA's approval is effective June 5, 2017.

**FOR FURTHER INFORMATION CONTACT:** Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On March 28, 2017, the Utah Department of Environmental Quality (UT DEQ) submitted an application titled ''NPDES e-Reporting Tool'' for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed UT DEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Utah's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 122, 125, 403–471, 501, and 503, is being published in the **Federal Register**:

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution; and

Part 501—State Sludge Management Program Regulations.

UT DEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

**Matthew Leopard,**

*Director, Office of Information Management.*

[FR Doc. 2017–11513 Filed 6–2–17; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–xxxx and 3060–0029]**

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility;

the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before July 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–xxxx.

*Title:* First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas.

*Form Number:* Not applicable.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities, not-for-profit institutions, and State, local, or Tribal governments.

*Number of Respondents and Responses:* 71 respondents; 765 responses.

*Estimated Time per Response:* 1 hour–5 hours.

*Frequency of Response:* Third party disclosure reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in Sections 1, 2, 4(i), 7, 301, 303, 309, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 157, 301, 303, 309, 332, and Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 306108.

*Total Annual Burden:* 2,869 hours.

*Total Annual Cost:* $82,285.

*Privacy Impact Assessment:* There are no impacts under the Privacy Act.

*Nature and Extent of Confidentiality:* No known confidentiality between third parties.

*Needs and Uses:* The Commission will submit this information collection for approval after the comment period to obtain the full three year clearance from the Office of Management and Budget (OMB). The Commission is requesting OMB approval for new disclosure requirements pertaining to the First Amendment to Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (First Amendment) to address the review of deployments of small wireless antennas and associated equipment under Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108 (formerly codified at 16 U.S.C. 470f). The FCC, the Advisory Council on Historic Preservation (Council), and the National Conference of State Historic Preservation Officers (NCSHPO) agreed to amend the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (Collocation Agreement) to account for the limited potential of small wireless antennas and associated equipment, including Distributed Antenna Systems (DAS) and small cell facilities, to affect historic properties. The Collocation Agreement addresses historic preservation review for collocations on existing towers, buildings, and other non-tower structures. Under the Collocation Agreement, most antenna collocations on existing structures are excluded from Section 106 historic preservation review, with a few exceptions defined to address potentially problematic situations. On August 3, 2016, the Commission's Wireless Telecommunications Bureau, ACHP, and NCSHPO finalized and executed the First Amendment to the Collocation Agreement, to tailor the Section 106 process for small wireless deployments by excluding deployments that have minimal potential for adverse effects on historic properties.

The following are the information collection requirements in connection with the amended provisions of Appendix B of Part 1 of the Commission's rules (47 CFR part 1, App. B):

• Stipulation VII.C of the amended Collocation Agreement provides that proposals to mount a small antenna on a traffic control structure (*i.e.,* traffic light) or on a light pole, lamp post or other structure whose primary purpose is to provide public lighting, where the structure is located inside or within 250 feet of the boundary of a historic district, are generally subject to review through the Section 106 process. These proposed collocations will be excluded from such review on a case-by-case basis, if (1) the collocation licensee or the owner of the structure has not received written or electronic notification that the FCC is in receipt of a complaint from a member of the public, an Indian Tribe, a SHPO or the Council, that the collocation has an adverse effect on one or more historic properties; and (2) the structure is not historic (not a designated National Historic Landmark or a property listed in or eligible for listing in the National Register of Historic Places) or considered a contributing or compatible element within the historic district, under certain procedures. These

procedures require that applicant must request in writing that the SHPO concur with the applicant's determination that the structure is not a contributing or compatible element within the historic district, and the applicant's written request must specify the traffic control structure, light pole, or lamp post on which the applicant proposes to collocate and explain why the structure is not a contributing element based on the age and type of structure, as well as other relevant factors. The SHPO has thirty days from its receipt of such written notice to inform the applicant whether it disagrees with the applicant's determination that the structure is not a contributing or compatible element within the historic district. If within the thirty-day period, the SHPO informs the applicant that the structure is a contributing element or compatible element within the historic district or that the applicant has not provided sufficient information for a determination, the applicant may not deploy its facilities on that structure without completing the Section 106 review process. If, within the thirty day period, the SHPO either informs the applicant that the structure is not a contributing or compatible element within the historic district, or the SHPO fails to respond to the applicant within the thirty-day period, the applicant has no further Section 106 review obligations, provided that the collocation meets the certain volumetric and ground disturbance provisions.

The First Amendment to the Collocation Agreement establishes new exclusions from the Section 106 review process for physically small deployments like DAS and small cells, fulfilling a directive in the Commission's Infrastructure Report and Order, 80 FR 1238, Jan. 8, 2015, to further streamline review of these installations. These new exclusions will reduce the cost, time, and burden associated with deploying small facilities in many settings, and provide opportunities to increase densification at low cost and with very little impact on historic properties. Facilitating these deployments thus directly advances efforts to roll out 5G service in communities across the country.

*OMB Control Number:* 3060–0029.

*Title:* Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340.

*Form Number:* FCC Form 340.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, not for profit institutions and State, local or Tribal Government.

*Number of Respondents and Responses:* 2,765 respondents; 2,765 responses.

*Estimated Time per Response:* 1–6 hours.

*Frequency of Response:* On occasion reporting requirement and Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 7,150 hours.

*Total Annual Cost:* $29,079,700.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 340 is used by licensees and permittees to apply for authority to construct a new noncommercial educational (''NCE'') FM and DTV broadcast station (including a DTS facility), or to make changes in the existing facilities of such a station. FCC Form 340 is only used if the station will operate on a channel that is reserved exclusively for NCE use, or in the situation where applications for NCE stations on non-reserved channels are mutually exclusive only with one another. Also, FCC Form 340 is used by Native American Tribes and Alaska Native Villages (''Tribes''), tribal consortia, or entities owned or controlled by Tribes when qualifying for the ''Tribal Priority'' under 47 CFR 73.7000, 73.7002.

FCC Form 340 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires a party applying for a new broadcast station, or making a major change to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of tendering the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060–0214, which covers Section 73.3527.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–11520 Filed 6–2–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0773, 3060–0805]**

### Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before July 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole

Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0773.

*Title:* Sections 2.803 and 2.803(c)(2), Marketing of RF Devices Prior to Equipment Authorization.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents and Responses:* 10,000 respondents and 10,000 responses.

*Estimated Time per Response:* 0.5 hours.

*Frequency of Response:* One-time reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303, 303(r), and 307.

*Total Annual Burden:* 5,000 hours.

*Total Annual Cost:* No cost.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three-year clearance from them.

The Commission has established rules for the marketing of radio frequency (RF) devices prior to equipment authorization under guidelines in 47 CFR Section 2.803. The general guidelines in Section 2.803 prohibit the marketing or sale of such equipment prior to a demonstration of compliance with the applicable equipment authorization and technical requirements in the case of a device subject to verification or Declaration of Conformity without special notification. Section 2.803(c)(2) permits limited marketing activities prior to equipment authorization, for devices that could be authorized under the current rules; could be authorized under waivers of such rules that are in effect at the time of marketing; or could be authorized under rules that have been adopted by the Commission but that have not yet become effective. These devices may be not operated unless permitted by section 2.805.

The following general guidelines apply for third party notifications:

(a) A RF device may be advertised and displayed at a trade show or exhibition prior to a demonstration of compliance with the applicable technical standards and compliance with the applicable equipment authorization procedure provided the advertising and display is accompanied by a conspicuous notice specified in *Section 2.803(c)(2)(iii)(A) or Section 2.803(c)(2)(iii)(B).*

(b) An offer for sale solely to business, commercial, industrial, scientific, or medical users of an RF device in the conceptual, developmental, design or pre-production stage prior to demonstration of compliance with the equipment authorization regulations may be permitted provided that the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or centers of distribution.

(c) Equipment sold as evaluation kit may be sold to specific users with notice specified in Section 2.803(c)(2)(iv)(B).

The information to be disclosed about marketing of the RF device is intended:

(1) To ensure the compliance of the proposed equipment with Commission rules; and

(2) To assist industry efforts to introduce new products to the marketplace more promptly.

The information disclosure applies to a variety of RF devices that:

(1) Is pending equipment authorization or verification of compliance;

(2) May be manufactured in the future;

(3) May be sold as kits; and

(4) Operates under varying technical standards.

The information disclosed is essential to ensuring that interference to radio communications is controlled.

*OMB Control Number:* 3060–0805.

*Title:* 700 MHz Eligibility; Regional Planning Requirements; and 4.9 GHz Guidelines (47 CFR 90.523, 90.527, and 90.1211).

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit; not-for-profit institutions; state, local or tribal government.

*Number of Respondents and Responses:* 1,172 respondents; 1,172 responses.

*Estimated Time per Response:* 1 hour–628 hours.

*Frequency of Response:* On occasion reporting and one-time reporting requirements; third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits (47 CFR 90.523) and voluntary (47 CFR 90.527 and 90.1211). Statutory authority for this information collection is contained in 47 U.S.C. 337.

*Total Annual Burden:* 35,756 hours.

*Total Annual Cost:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses: Section 90.523* requires that nongovernmental organizations that provide services which protect the safety of life or property obtain a written statement from an authorizing state or local government entity to support the nongovernmental organization's application for assignment of 700 MHz frequencies. *Section 90.527* requires 700 MHz regional planning regions to submit an initial plan for use of the 700 MHz general use spectrum in the consolidated narrowband segment 769–775 MHz and 799–805 MHz. Regional planning committees may modify plans by written request, which must contain

the full text of the modification and certification that the modification was successfully coordinated with adjacent regions. Regional planning promotes a fair and open process in developing allocation assignments by requiring input from eligible entities in the allocation decisions and the application technical review/approval process. Entities that seek inclusion in the plan to obtain future licenses are considered third party respondents. *Section 90.1211* authorizes the fifty-five 700 MHz regional planning committees to develop and submit on a voluntary basis a plan on guidelines for coordination procedures to facilitate the shared use of the 4940–4990 MHz (4.9 GHz) band. The Commission has stayed this requirement indefinitely. Applicants are granted a geographic area license for the entire fifty MHz of 4.9 GHz spectrum over a geographical area defined by the boundaries of their jurisdiction—city, county or state. Accordingly, licensees are required to coordinate their operations in the shared band to avoid interference, a common practice when joint operations are conducted.

Commission staff will use the information to assign licenses, determine regional spectrum requirements and to develop technical standards. The information will also be used to determine whether prospective licensees operate in compliance with the Commission's rules. Without such information, the Commission could not accommodate regional requirements or provide for the efficient use of the available frequencies. This information collection includes rules to govern the operation and licensing of the 700 MHz and 4.9 GHz bands rules and regulation to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. Such information will continue to be used to verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–11521 Filed 6–2–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–1149]**

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before July 5, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–1149.

*Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

*Number of Respondents and Responses:* 259,600 respondents and 259,600 responses.

*Estimated Time per Response:* .166 hours (10 minutes).

*Frequency of Response:* One-time reporting requirement.

*Obligation to Respond:* Voluntary.

*Total Annual Burden:* 43,267 hours.

*Total Annual Costs:* No Cost.

*Nature and Extent of Confidentiality:* Responses to feedback instruments will be confidential.

*Privacy Act Impact Assessment:* There is no Privacy Act impact as personally identifiable information (PII) will not be collected.

*Needs and Uses:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or change in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management. Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods of assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–11536 Filed 6–2–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[OMB 3060–0798; OMB 3060–0508]**

## Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before August 4, 2017. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the PRA, 44 U.S.C. 3501–3520, the FCC invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–0798.

*Title:* FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

*Form Number:* FCC Form 601.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals and households; Business or other for-profit entities; Not-for-profit institutions; and State, local or tribal governments.

*Number of Respondents and Responses:* 253,320 respondents and 253,320 responses.

*Estimated Time per Response:* 0.5–1.25 hours.

*Frequency of Response:* Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement and periodic reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

*Total Annual Burden:* 222,055 hours.

*Total Annual Cost:* $71,306,250.

*Privacy Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* In general there is no need for confidentiality with this collection of information.

*Needs and Uses:* FCC Form 601 is a consolidated, multi-part application

form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are encouraged to submit FCC Form 601 electronically and are required to do so when submitting FCC Form 601 to apply for an authorization for which the applicant was the winning bidder in a spectrum auction.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission use an FRN.

On November 7, 2014, the Federal Communications Commission (''Commission'') released a Report and Order and Further Notice of Proposed Rulemaking (FCC 14–181) in WT Docket No. 12–40 to reform its rules governing the 800 MHz Cellular Radiotelephone (Cellular) Service. Subsequently, on March 24, 2017, the Commission released a Second Report and Order (FCC 17–27) in that same proceeding, revising certain technical and licensing rules applicable to the Cellular Service (Cellular Second R&O). In addition to rule revisions that do not affect this information collection, in the Cellular Second R&O, the Commission adopted revised radiated power rules, giving Cellular licensees the option to comply with effective radiated power limits based on power spectral density (PSD), and it made conforming changes to related technical provisions to accommodate PSD. The Commission retained, as an option, the existing radiated power limits (non-PSD) and related technical requirements for Cellular licensees that either cannot or choose not to use a PSD model. The Commission also revised the definition and filing requirements for permanent discontinuance of operations, consistent with transitioning the Cellular Service from a site-based regime to one that is geographic-based.

The Commission now seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060–0798 to permit the collection of PSD-related technical information (in lieu of certain non-PSD technical information) for Cellular Service licensees that opt to use a PSD model for their systems, pursuant to the Cellular Second R&O. We are revising Schedule F of Form 601 accordingly to allow licensees to request modifications to their licenses based on PSD operations. We do not anticipate that this revision will have any impact on the burden to complete the form/Schedule F.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601 to revise FCC Form 601 accordingly.

*OMB Control Number:* 3060–0508.

*Title:* Parts 1 and 22 Reporting and Recordkeeping Requirements.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities, Individuals or households, and State, Local or Tribal Governments.

*Number of Respondents and Responses:* 15,465 respondents; 16,183 responses.

*Estimated Time per Response:* 0.017 hours–10 hours.

*Frequency of Response:* Recordkeeping requirement; On occasion, quarterly, and semi-annual reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 222, 303, 309 and 332.

*Total Annual Burden:* 4,406 hours.

*Annual Cost Burden:* $19,138,350.

*Privacy Act Impact Assessment:* Yes.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* Part 22 contains the technical and legal requirements for radio stations operating in the Public Mobile Services. The information collected is used to determine on a case-by-case basis, whether or not to grant licenses authorizing construction and operation of wireless telecommunications facilities to common carriers. Further, this information is used to develop statistics about the demand for various wireless licenses and/or the licensing process itself, and occasionally for rule enforcement purposes.

This revised information collection reflects changes in rules applicable to Part 22 800 MHz Cellular Radiotelephone (''Cellular'') Service licensees and applicants, as adopted by the Commission in a Second Report and Order in WT Docket No. 12–40 and a companion Report and Order in WT Docket No. 10–112 concerning the Wireless Radio Services (WRS), which include the Cellular Service among others (WRS R&O) (FCC 17–27). The Cellular Second R&O and WRS R&O revised or eliminated certain licensing rules and modernized outdated technical rules applicable to the Cellular Service. Specifically, in addition to rule revisions that do not affect this information collection, in the Cellular Second R&O, the Commission revised the Cellular radiated power rules, giving licensees the option to comply with effective radiated power limits based on power spectral density (PSD), and giving licensees the additional option to operate at PSD limits above a specified threshold (Higher PSD Limits) so long as certain conditions are met. One of these conditions, set forth in a new provision of the Cellular rules, is a requirement for written advance notification to public safety entities within a specified radius of the cell sites to be deployed at the Higher PSD Limits. This third-party disclosure requirement is an important component of the Commission's approach to protecting public safety entities from increased potential for unacceptable interference to their communications. Also in the Cellular Second R&O and of relevance to this information collection, the Commission eliminated the requirement for filings for certain changes to cell sites in a Cellular system. In the WRS R&O, the Commission deleted the Part 22 Cellular comparative hearing/license renewal rules, resulting in discontinued information collections for the following rule sections: 22.935, 22.936, 22.939, and 22.940.

The Commission is now seeking approval from the Office of Management and Budget (''OMB'') for a revision of this information collection.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2017–11522 Filed 6–2–17; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Update listing of financial institutions in liquidation.

**SUMMARY:** Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 31, 2017.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

| FDIC ref. No. | Bank name | City | State | Date closed |
|---|---|---|---|---|
| 10528 | Fayette County Bank | Saint Elmo | IL | 5/26/2017 |

[FR Doc. 2017–11514 Filed 6–2–17; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** Thursday, June 8, 2017 at 10:00 a.m.

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**Items To Be Discussed**

*Draft Advisory Opinion 2017–01:* American Urological Association

*Draft Advisory Opinion 2017–03:* American Association of Clinical Urologists, Inc./UROPAC

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dayna C. Brown, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Signed:

**Dayna C. Brown,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2017–11715 Filed 6–1–17; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the mandatory Government-Administered, General-Use Prepaid Card Issuer Survey (FR 3063a; OMB No. 7100–0343) and the voluntary Government-Administered, General-Use Prepaid Card Government Survey (FR 3063b; OMB No. 7100–0343).

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

**DATES:** Comments must be submitted on or before August 4, 2017.

**ADDRESSES:** You may submit comments, identified by *FR 3063a or FR 3064b,* by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be

requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**Request for Comment on Information Collection Proposal**

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report**

*Report Title:* Government-Administered, General-Use Prepaid Card Surveys.

*Agency Form Number:* FR 3063a and FR 3063b.

*OMB Control Number:* 7100–0343.

*Frequency:* Annual.

*Respondents:* Issuers of government-administered, general-use prepaid cards (FR 3063a) and governments that administer general-use prepaid card programs (FR 3063b).

*Estimated Number of Respondents:* FR 3063a: 25; FR 3063b: 75.

*Estimated Average Hours per Response:* FR 3063a: 25 hours; FR 3063b: 15 hours.

*Estimated Annual Burden Hours:* FR 3063a: 625 hours; FR 3063b: 1,125 hours.

*General Description of Report:* The issuer survey (FR 3063a) collects data from issuers of government-administered, general-use prepaid cards including card program information, cards outstanding, card funding, ATM transactions, purchase transactions, fees paid by issuers to third parties, interchange fees, and cardholder fees. The issuer survey (FR 3063a) is mandatory.

The government survey (FR 3063b) collects data from state governments, the District of Columbia, and U.S. territories (collectively ''state governments''), and municipal government offices located within the United States (local government offices) that administer general-use prepaid card payment programs.[1] Data collected from government offices include program information, the number of cards outstanding, and funding information. The government survey (FR 3063b) is voluntary.

The Board uses data from these surveys to support an annual report to the Congress on the prevalence of use of general-use prepaid cards in federal, state, and local government-administered payment programs and on the interchange and cardholder fees charged with respect to such use of such cards.

*Legal Authorization and Confidentiality:* The Board's Legal Division has determined that both the issuer survey and the government survey are authorized by subsection 920(a) of the Electronic Fund Transfer Act, which was amended by section 1075(a) of the Dodd-Frank Act (15 U.S.C. 1693o–2). This subsection requires the Board to submit an annual report to Congress on the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs and the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards (15 U.S.C. 1693o–2(a)(7)(D)). It also provides the Board with authority to require issuers to provide information to enable the Board to carry out the provisions of the subsection (15 U.S.C. 1693o–2(a)(3)(B)). The obligation of issuers to respond to the issuer survey (FR 3063a) is mandatory. However, the obligation of state governments and local government offices to respond to the government survey (FR 3063b) is voluntary.

All of the information collected on the government survey and a limited amount of information collected on the issuer survey is publicly available, and thus, is not accorded confidential treatment. However, most of the information collected on the issuer survey is not publicly available and may be kept confidential as explained herein. Data collected by the issuer survey may be kept confidential under exemption (b)(4) of the Freedom of Information Act (FOIA), which exempts from disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)). Such data may be kept confidential under exemption 4 if the release of data would cause substantial harm to the competitive position of the issuer. For example, certain issuer survey responses would likely contain information related to an organization's revenue structure and other proprietary and commercial information and the release of such information would cause substantial harm to the competitive position of the issuer and could therefore be kept confidential under exemption 4.

Board of Governors of the Federal Reserve System, May 31, 2017.

**Ann E. Misback,**

*Secretary of the Board.*

[FR Doc. 2017–11577 Filed 6–2–17; 8:45 am]

**BILLING CODE 6210–01–P**

[1] The issuer and government surveys request information on all federal, state, or local government-administered payment programs that provide a general-use prepaid card (or other debit card) disbursement option to payment recipients. The government survey may be distributed to federal government agencies in addition to state and local governments, but collections of information from federal government agencies are not subject to the Paperwork Reduction Act and, thus, are not included in this discussion.

U.S. territories include American Samoa, Guam, Midway Islands, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

## FEDERAL RESERVE SYSTEM

**Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y

(12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2017.

*A. Federal Reserve Bank of St. Louis* (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments .applications@stls.frb.org:*

1. *Paramount Financial Group, LLC,* St. Louis, Missouri; to acquire 100 percent of the voting shares of Paramount Bond & Mortgage Co., Inc., St. Louis, Missouri, and thereby engage in mortgage activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 2017.

**Yao-Chin Chao,**

*Assistant Secretary of the Board.*

[FR Doc. 2017–11527 Filed 6–2–17; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

**SUMMARY:** The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on June 23, 2017. The subject of the meeting will be ''Measurement Science and Glycemic Control.'' The meeting is open to the public.

**DATES:** The meeting will be held on June 23, 2017; from 8:30 a.m. to 4:30 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

**ADDRESSES:** The meeting will be held in the Democracy 2 Building at 6707 Democracy Blvd., Bethesda, MD, in Conference Room 7050.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning this meeting, see the DMICC Web site, *www.diabetescommittee.gov,* or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: *dmicc@mail.nih.gov.*

**SUPPLEMENTARY INFORMATION:** The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The June 23, 2017 DMICC meeting will focus on Measurement Science and Glycemic Control.

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, *www.diabetescommittee.gov.*

Dated: May 23, 2017.

**B. Tibor Roberts,**

*Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.*

[FR Doc. 2017–11494 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; LTCDS Contract Review.

*Date:* June 27, 2017.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; SBIR Phase II Exploratory Clinical Trials.

*Date:* June 30, 2017.

*Time:* 12:00 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Thomas A. Tatham, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7021, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK P01 Review.

*Date:* July 18, 2017.

*Time:* 4:00 p.m.to 6:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Project on Mucosal Immunology.

*Date:* July 25, 2017.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7017, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 30, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–11495 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* NIGMS Initial Review Group; Training and Workforce Development Subcommittee—D; To review R25 Bridges to Baccalaureate and K12 IRACDA Grant applications.

*Date:* June 22–23, 2017.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 30, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–11498 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive Patent License: Production of Attenuated West Nile Virus Vaccines

**AGENCY:** National Institutes of Health, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Commercialization Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Summary Information section of this notice to the International Medica Foundation located in Shoreview, Minnesota, U.S.A.

**DATES:** Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before June 20, 2017 will be considered.

**ADDRESSES:** Requests for copies of the patent application, inquiries, and comments relating to the contemplated Exclusive Commercialization Patent License should be directed to: Peter Soukas, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Suite 6D, Rockville, MD 20852–9804; Email: *ps193c@nih.gov;* Telephone: (301) 594–8730; Facsimile: (240) 627–3117.

**SUPPLEMENTARY INFORMATION:**

**Intellectual Property**

E–357–2001/0,1, Pletnev et al., ''Construction of West Nile Virus and Dengue Virus Chimeras for use in a Live Virus Vaccine to Prevent Disease Cause by West Nile Virus,'' U.S. Provisional Patent Application Number 60/347,281, filed January 10, 2002, PCT Patent Application Number PCT/US2003/00594, filed January 9, 2003, U.S. Patent Application Number 10/871,775 filed June 18, 2004 (now U.S. Patent Number 8,778,671), U.S. Patent Application Number 14/305,572, filed June 16, 2014, European Patent Application Number 03729602.7, filed January 9, 2003, Israeli Patent Application Number 162949, filed January 9, 2003 (now Israeli Patent Number 162949), Canadian Patent Application Number 2472468, filed January 9, 2003 (now Canadian Patent Number 2472468), Australian Patent Application Number 2003216046, filed January 9, 2003 (now Australian Patent Number 2003216046), Japanese Patent Application Number 2003–559545, filed January 9, 2003 (now Japanese Patent Number 4580650), Australian Patent Application Number 2008203442 filed July 31, 2008 (now Australian Patent Number 2008203442), Israeli Patent Application Number 209342, filed January 9, 2003 (now Israeli Patent Number 209342), European Patent Application Number 11000126.0, filed January 9, 2003 (now European Patent Number 2339011, validated in Belgium, Great Britain, the Netherlands, Norway, Germany, Denmark and France), Australian Patent Application Number 2011250694, filed November 10, 2011 (now Australian Patent Number 2011250694), Australian Patent Application Number 2013213749, filed August 9, 2013, European Patent Application Number 15163537.2, filed April 14, 2015, and Canadian Patent Application Number 2903126, filed August 27, 2015, and U.S. and foreign patent applications

claiming priority to the aforementioned applications.

E–006–2007/0, Pletnev et al., ''Synergistic Internal Ribosome Entry Site/MicroRNA Based Approach for Attenuation of Flaviviruses and Live Vaccine Development,'' U.S. Provisional Patent Application Number 62/443,214, filed January 6, 2017, and U.S. and foreign patent applications claiming priority to the aforementioned applications.

The patent rights in these inventions have been assigned to the government of the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to live attenuated West Nile Virus vaccines for use in humans or animals.

West Nile virus (WNV) is a positive-strand RNA virus of the family Flaviviridae, part of the Japanese encephalitis virus serocomplex that includes important human pathogens such as Murray Valley encephalitis, Japanese encephalitis, and St. Louis encephalitis viruses. WNV has been present in Africa and Asia for decades and has usually been associated with mild illness that includes symptoms of low-grade fever, headache, rash, myalgia, and arthralgia. Recently, WNV has spread rapidly across the Western hemisphere and is now the major vector-borne cause of viral encephalitis in the United States. By 2010, 3 million adults were estimated to have been infected with WNV in the United States, with nearly 13,000 cases of neuroinvasive disease, almost half of which occurred in adults greater than 60 years of age. In this age group, WNV infection can cause hepatitis, meningitis, and encephalitis, leading to paralysis, coma, and death. WNV is considered an emerging infection in the United States and presents a significant public health threat. This epidemiological trend of WNV suggests that the United States can expect periodic WNV outbreaks, underscoring the need for a safe and effective vaccine to protect at-risk populations, especially older adults.

WNV is also a significant worldwide public health threat. Starting in the mid-1990s, the frequency, severity, and geographic range of WNV outbreaks increased, and outbreaks of WNV meningitis and encephalitis affecting primarily adults struck Bucharest, Romania, in 1996, Volgograd, Russia, in 1999, and Israel, in 2000. WNV crossed the Atlantic and reached the Western hemisphere in the summer of 1999 when a cluster of patients with encephalitis was reported in the metropolitan area of New York City, New York, in the United States, and within 3 years the virus had spread to most of the contiguous U.S. and the neighboring countries of Canada and Mexico. In addition, although few human cases have been reported, WNV has also been found in Central and South America through surveillance studies in field specimens, suggesting a potential risk for an outbreak in humans. In the approximately eighty (80) years since its discovery, the virus has propagated to a vast region of the globe and is now considered the most important causative agent of viral encephalitis worldwide.

No vaccine exists today to prevent WNV. The methods and compositions of this invention provide a means for prevention of WNV infection by immunization with live attenuated, immunogenic viral vaccines against WNV.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the prospective field of use that are filed in response to this notice will be treated as objections to the grant of the contemplated Exclusive Commercialization Patent License Agreement. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: May 24, 2017.

**Suzanne Frisbie,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2017–11491 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Microbiome and Antibiotic Resistance in Elders Study (MARvELS).

*Date:* June 19, 2017.

*Time:* 1:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

*Contact Person:* Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; A Global Perspective on Cognition and Dementia.

*Date:* June 22, 2017.

*Time:* 1:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892.

*Contact Person:* Carmen Moten, Ph.D., MPH, Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703, *cmoten@mail.nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Pragmatic Trials for Dementia Care.

*Date:* June 23, 2017.

*Time:* 2:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, Suite 2W200, 7200 Wisconsin Avenue, Bethesda, MD (Telephone Conference Call).

*Contact Person:* Carmen Moten, MPH, Ph.D., Scientific Review Officer, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7703.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 30, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–11497 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Chris Kornak, J.D., 240–627–3705, *chris.kornak@nih.gov.* Licensing information and copies of the U.S. patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

**SUPPLEMENTARY INFORMATION:** Technology description follows.

### Methods for Treating Cerebral Edema and Restoring Blood-Brain Barrier Integrity

*Description of Technology:* There are nearly 600 million clinical cases of *Plasmodium falciparum* malaria annually. For most individuals living in endemic areas, malaria is uncomplicated and resolves with time. However, malaria can become severe and life threatening in young children, which resulted in 429,000 deaths in 2015. One of the most deadly complications of *P. falciparum* infection is cerebral malaria (HCM) characterized by the onset of severe neurological signs such as altered consciousness, seizures, and coma. Thus, there is an urgent need for the development of effective adjunctive therapies that can be used in conjunction with anti-malarials to treat children with HCM.

The inventors, listed below, have discovered that glutamine antagonists can be used to treat mice with experimental cerebral malaria (ECM) in conjunction with anti-malarials. It was found that glutamine antagonist, 6-diazo-5-L-norleucine (DON) successfully restored blood-brain barrier integrity and decreased brain swelling in ECM mice. This finding suggests that glutamine antagonists may be effective in treating neurological damage in HCM patients.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

*Potential Commercial Applications:*

- Therapeutic for cerebral malaria

*Competitive Advantages:*

- Effective adjunctive therapeutics for cerebral malaria are not available.

*Development Stage:* Pre-Clinical.

*Inventors:* Susan K. Pierce, NIAID, NIH, Johnathan Powell, Johns Hopkins University.

*Publications:* Gordon, Emile B., et al. (2015) Targeting glutamine metabolism rescues mice from late-stage cerebral malaria. PNAS 112(42): 13075–13080.

*Intellectual Property:* HHS Reference No. E–202–2015/0—US Provisional Patent Application No. 62/175,000 filed June 12, 2015; PCT Patent Application No. PCT/US2016/036996 filed June 10, 2016.

*Licensing Contact:* Chris Kornak, J.D., 240–627–3705, *chris.kornak@nih.gov.*

*Collaborative Research Opportunity:* For collaboration opportunities, please contact Chris Kornak, J.D. 240–627–3705, *chris.kornak@nih.gov.*

Dated: May 24, 2017.

**Suzanne Frisbie,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2017–11492 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Research Project Grants.

*Date:* June 20, 2017.

*Time:* 3:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

*Date:* June 21, 2017.

*Time:* 10:30 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Preventing Type 2 Diabetes.

*Date:* June 28, 2017.

*Time:* 10:00 a.m. to 11:00 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK PTH Receptor (P01).

*Date:* July 25, 2017.

*Time:* 12:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jason D. Hoffert, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7343, 6707 Democracy Boulevard, Bethesda, MD 20817, 301–496–9010, *hoffertj@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 30, 2017.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2017–11496 Filed 6–2–17; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines).

A notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.samhsa.gov/workplace.*

**FOR FURTHER INFORMATION CONTACT:** Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N03A, Rockville, Maryland 20857; 240–276–2600 (voice).

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs,'' as amended in the revisions listed above, requires strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on urine specimens for federal agencies.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following HHS-certified laboratories and IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

#### HHS-Certified Instrumented Initial Testing Facilities

Dynacare, 6628 50th Street NW., Edmonton, AB Canada T6B 2N7, 780–784–1190 (Formerly: Gamma-Dynacare Medical Laboratories)

#### HHS-Certified Laboratories

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 844–486–9226

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400 (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc., Aegis Analytical Laboratories)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center–Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917,

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

Dynacare *, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630 (Formerly: Gamma-Dynacare Medical Laboratories)

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845 (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for

Laboratory Services, a Division of LabOne, Inc.)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088, Testing for Veterans Affairs (VA) Employees Only
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891 x7
Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888–635–5840
Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370 (Formerly: SmithKline Beecham Clinical Laboratories)
Redwood Toxicology Laboratory, 3700 Westwind Blvd., Santa Rosa, CA 95403, 800–255–2159
STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085, Testing for Department of Defense (DoD) Employees Only

**Charles LoDico,**

*Chemist.*

[FR Doc. 2017–11512 Filed 6–2–17; 8:45 am]

**BILLING CODE 4160–20–P**

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on November 25, 2008 (73 FR 71858). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[17X.LLAK942000.L54200000.FR0000. LVDIL0440000; AA086373]**

## Notice of Application for a Recordable Disclaimer of Interest for Lands Underlying the George River in Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The State of Alaska (State) has filed an application with the Bureau of Land Management (BLM) for a Recordable Disclaimer of Interest (RDI) from the United States in those lands underlying the George River from its mouth to Julian Creek. The State asserts that the George River, a major tributary of the Kuskokwim River in southwestern Alaska, was navigable and unreserved at the time of Alaska Statehood in 1959.

**DATES:** Comments on this action are due on or before September 5, 2017.

**ADDRESSES:** You may submit comments on the State of Alaska's Application for an RDI or the BLM Draft Summary Report for the State's Application for a Recordable Disclaimer of Interest by mail or email. To file by mail, send to: RDI Program Manager (AK–942), Division of Lands and Cadastral, BLM Alaska State Office, 222 West 7th Avenue, #13, Anchorage, AK 99513. To submit by email, send to: *anichols@blm.gov.*

**FOR FURTHER INFORMATION CONTACT:** Angie Nichols, RDI Program Manager, at 222 West 7th Avenue, #13, Anchorage, AK 99513; 907–271–3359; or *anichols@blm.gov;* or visit the BLM Recordable Disclaimer of Interest Web site at *https://www.blm.gov/programs/lands-and-realty/regional-information/alaska/RDI/kuskokwim.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay System (FRS) at 1–800–877–8339 to contact the individual identified in this section during normal business hours. The FRS is available 24 hours a day, seven days a week, to leave a message or a question with that individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** On March 10, 2006, as modified on September 16, 2015, the State of Alaska filed an application (AA–86373) for an RDI pursuant to section 315 of the Federal Land Policy and Management Act of 1976 and the regulations contained in 43 CFR subpart 1864 for the lands underlying the George River. The State asserts that this river was navigable at the time of Alaska Statehood. As such, the State contends that ownership of the lands underlying this river automatically passed from the United States to the State of Alaska in 1959 at the time of Statehood under the Equal Footing Doctrine; the Submerged Lands Act of 1953; the Alaska Statehood Act; and other title navigability law.

The State's application is for all submerged lands underlying the portion of the George River from its mouth to Julian Creek. Specifically, these are the submerged lands within the bed of the George River between the ordinary high water mark of the left and right banks, beginning at the confluence of Julian Creek in Township 24 North, Range 44 West, Section 4, Seward Meridian, Alaska, U.S. Geological Survey (USGS) 1:63,360 series topographic map Iditarod A–3 (1954). Thence southerly to its confluence with the Kuskokwim River in Township 21 North, Range 46 West, Section 21, Seward Meridian, Alaska, USGS 1:63,360 series topographic map Sleetmute D–5 (1954, minor revisions 1975). The applied section of the George River flows through the following Townships and Ranges:

Seward Meridian:

Township 24 North, Ranges 44–45 West;

Township 23 North, Ranges 45–46 West;

Township 22 North, Ranges 45–46 West;

Township 21 North, Range 46 West.

The precise location may be within other townships due to the ambulatory nature of these water bodies.

An RDI is a legal document through which the United States disavows ownership of specified land, but it does

not grant, convey, transfer, or renounce any title or interest in the lands, nor does it release any tax, judgment, or lien. This Notice of Application is intended to inform the public of the pending application and the State's supporting evidence.

A final decision on the merits of the State's application will not be made before September 5, 2017. During the 90-day period, interested parties may comment on the State's application, AA–086373, and supporting evidence. This supporting evidence from the State includes three navigability reports prepared by the BLM on May 6, 1980; November 8, 1984; and July 8, 1985. The State's application also included an extract of the ''Regional Report'' for the Kuskokwim River Region prepared by the BLM in 1985. In addition, the application contained three maps based upon the USGS 1:63,360 topographic maps with water body data extracted from the USGS National Hydrography Dataset—2004, detailing the river from its mouth to its source.

On August 25, 1982, the BLM determined the George River is navigable through Georgetown Native Corporation's selected lands, situated along the lower 22 miles of the river. BLM extended its navigability determination an additional 19 miles upriver to Julian Creek on November 8, 1984. Subsequent navigability opinions in 1985, 1988, and 2004 affirmed that the lower 41 miles of the river are navigable up to Julian Creek.

Interested parties may also comment during this time on the BLM's Draft Summary Report for the State's Application for a Recordable Disclaimer of Interest, which is available on the RDI Web site (see **FOR FURTHER INFORMATION CONTACT**).

Copies of the State application, supporting evidence, the BLM Draft Summary Report, and comments, including names and street addresses of commenters, will be available in the case file for public review at the BLM Alaska State Office, Public Room, 222 West 7th Avenue, #13, Anchorage, AK 99513, during regular business hours from 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment

—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If the BLM determines the State's evidence is sufficient to find a favorable determination and neither the records nor a valid objection disclose a reason not to disclaim, then the BLM may decide to approve the application.

**Authority:** 43 CFR 1864.3.

**Erika L. Reed,**

*Deputy State Director, Division of Lands and Cadastral.*

[FR Doc. 2017–11531 Filed 6–2–17; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–23294; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, Sacramento, CA

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Reclamation (Reclamation), Mid-Pacific Regional Office, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Reclamation, Mid-Pacific Regional Office. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, at the address in this notice by July 5, 2017.

**ADDRESSES:** Melanie Ryan, NAGPRA Specialist/Physical Anthropologist, Mid-Pacific Regional Office, Bureau of Reclamation, MP–153, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5526, email *emryan@usbr.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, Sacramento, CA. The human remains and associated funerary objects were removed from lands managed by Reclamation, Mid-Pacific Regional Office, in Modoc County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

#### Consultation

A detailed assessment of the human remains and associated funerary objects was made by Reclamation, Mid-Pacific Regional Office, professional staff in consultation with representatives of the Klamath Tribes. The Klamath Tribes represent Klamath, Modoc, and Yahooskin Band of Snake Peoples.

#### History and Description of the Remains

In 1945, human remains representing, at minimum two individuals were removed from the Tule Lake Internment Camp site (CA–MOD–NL4) in Modoc County, CA, by Marvin Kaufmann Opler and donated to the University of California, Berkeley. Opler was an anthropologist, social psychologist, and community analyst who arrived at Tule Lake Internment Camp in May 1943. The human remains were found during the excavation of an irrigation ditch at the camp. No further details about the excavation or the archeological context of the human remains was recorded. The human remains were curated at the Phoebe Hearst Museum of Anthropology, University of California, Berkeley, CA.

Reclamation, Mid-Pacific Regional Office, became aware of these human remains on August 27, 2015, when an inquiry was made by the Klamath Tribes to Reclamation, Mid-Pacific Regional

Office, regarding human remains and one funerary object from site CA–MOD–NL4. The human remains were confirmed to be under Reclamation, Mid-Pacific Regional Office, control on November 30, 2015, and the Phoebe Hearst Museum transferred the human remains and funerary objects to Reclamation, Mid-Pacific Regional Office, on December 22, 2015.

The human remains consist of one nearly complete adult female, approximately 30–40 years old and a few ribs and thoracic vertebra of one adult, age and sex indeterminate. No known individuals were identified. The two associated funerary objects are one bone tube and one bag of associated soil.

In consultation with the Klamath Tribes, Reclamation, Mid-Pacific Regional Office, determined a close affiliation with the Modoc, a Native American tribe who resided in northeast California and southeast Oregon during, and prior to, Euro-American contact. There is nothing temporally diagnostic available to directly indicate the antiquity of this collection. The Tule Lake Internment Center is located in the ancestral homelands of the Modoc Indians. Modoc territory extended across both sides of what is now the California-Oregon border immediately east of the Cascades. North and west of Modoc territory was the territory of the Klamath, who spoke a dialect of the same language. The western shore of Goose Lake was shared by the Modoc and the Yahooskin Paiute whose territory was to the east. The Klamath, Modoc, and Yahooskin band of Snake (Northern Paiute) Indians ceded lands in south-central Oregon to the United States under terms of the Klamath Treaty of 1864. By the terms of the treaty, all three Indian groups, who are now collectively known as the Klamath Tribes, retained a considerable portion of the Klamath homeland as a reservation.

The amount of wear on the dentition and the association of a bone tube indicates that the human remains are Native American. The associated bone tube was identified through consultation as part of a Modoc bone whistle. The Klamath Tribes presented an ancient Modoc bone whistle of the same form and construction as CA–MOD–NL4 bone tube.

On June 30, 1924, human remains representing, at minimum, one individual were removed from the Snake Island, Tule Lake site (CA–MOD–NL2) in Modoc County, CA, by Mr. Paul Fair of the U.S. Forest Service. Mr. Fair donated the items to the University of California, Berkeley, where they were curated by the Phoebe Hearst Museum. The one associated funerary object is ''some bits of cordage.''

On December 8, 2015, the Klamath Tribes inquired about the human remains and associated funerary object from site CA–MOD–NL2. At that time, the human remains, consisting of a skull, had been misplaced by the museum and had not appeared on their annual inventory since the 1980s. The absence of the human remains prevented the identification of the human remains as Native American. On December 11, 2015, the associated funerary object was confirmed to be under the control of the Reclamation, Mid-Pacific Regional Office. The Phoebe Hearst Museum transferred it to Reclamation, Mid-Pacific Regional Office, on March 28, 2016.

Snake Island is located on the Bureau of Reclamation-withdrawn lands that were under control of Reclamation, Mid-Pacific Regional Office, in 1924. During consultation with the Klamath Tribes, Snake Island was identified to be the center of the Modoc world in a place referred to in their creation narrative. The Klamath Tribes provided examples of creation stories that identify Snake Island as an extraordinarily sacred location for Klamath and Modoc peoples. The first stitch of the matting/cordage was recognized by the Klamath Tribes as unique to the Modoc. During consultation, the Klamath Tribes provided several examples of Modoc woven items that were made using the same technique. This weaving technique is described in numerous ethnographies.

**Determinations Made by the U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office**

Officials of Reclamation, Mid-Pacific Regional Office, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Klamath Tribes and The Modoc Tribe of Oklahoma.

**Additional Requestors and Disposition**

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Melanie Ryan, NAGPRA Specialist/Physical Anthropologist, Mid-Pacific Regional Office, Bureau of Reclamation, MP–153, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5526, email *emryan@usbr.gov,* by July 5, 2017. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Klamath Tribes and The Modoc Tribe of Oklahoma may proceed.

The U.S. Department of the Interior, Bureau of Reclamation, Mid-Pacific Regional Office, is responsible for notifying the Klamath Tribes and The Modoc Tribe of Oklahoma that this notice has been published.

Dated: April 21, 2017.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2017–11540 Filed 6–2–17; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL BOUNDARY AND WATER COMMISSION

### United States and Mexico; United States Section; Notice of Availability of a Draft Supplemental Environmental Assessment: Flood Control Improvements to the Rio Grande Canalization Project From Vinton to Canutillo, El Paso County, Texas (Canutillo Phase II)

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico (USIBWC).

**ACTION:** Notice of Availability of the Draft Supplemental Environmental Assessment (SEA).

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations; and the United States Section, Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the United States Section hereby gives notice that the *Draft Supplemental Environmental Assessment and Mitigated Finding of No Significant Impact for Flood Control Improvements to the Rio Grande Canalization Project*

*from Vinton to Canutillo, El Paso County, Texas (Canutillo Phase II)* is available. An environmental impact statement will not be prepared unless additional information which may affect this decision is brought to our attention within 30-days from the date of this Notice.

*Public Comments:* USIBWC will consider substantive comments from the public and stakeholders for 30 days after the date of publication of this Notice of Availability in the **Federal Register**.

Please note all written and email comments received during the comment period will become part of the public record, including any personal information you may provide. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Comments and requests for public hearings should be sent to: Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

*Background:* This Draft SEA analyzes the potential impacts of constructing a flood control improvement project along the Rio Grande located within a portion of the Rio Grande Canalization Project (RGCP) protective levee system in El Paso County, Texas along approximately 5.6 miles on the east bank from just north of Vinton Road Bridge, south through the Canutillo area, and downstream to Borderland Bridge.

The purpose is to construct a flood control structure with the following objectives: (1) Eliminate levee deficiencies within the Vinton to Canutillo reach and provide flood protection to withstand the 100-year flood with a minimum of 2 feet freeboard; (2) Maintain the design flood capacity of the RGCP; and 3) Enable the USIBWC to obtain accreditation of levees by the Federal Emergency Management Agency (FEMA).

In the Final Environmental Assessment on Flood Control Improvements to the Rio Grande Canalization Project, dated December 2007, the USIBWC proposed to conduct flood control improvements along approximately 52-miles of east and west levees within the RGCP. The proposed action included the construction of a new flood control structure in the Canutillo Area; however, details of the proposed structure had not been developed and were therefore not analyzed in the 2007 EA.

This Draft SEA evaluates potential environmental impacts of the No Action Alternative and the Preferred Alternative. The Preferred Alternative calls for the construction of a combination of 3 miles of new earthen levees on the floodplain and 2.6 miles of concrete floodwall where limited right of way or physical space exists between the river and the railroad. The Preferred Alternative would also require the construction of a floodgate at the Canutillo Bridge, eleven drainage structures on ephemeral streams with bank stabilization (including modification of one existing drainage structure and construction of ten new drainage structures). Scour protection blankets would be required on some sections of the earthen levee that are close to the river bank. Permits would be required from the Burlington Northern Santa Fe Railroad for work within the railroad right of way. An Individual Permit would be required from the U.S. Army Corps of Engineers for dredge and fill of Waters of the United States, per the Clean Water Act Sections 404 and 401. Six additional alternatives were considered and evaluated in previous analyses but were either found to not meet the purpose and need or were impractical.

Potential impacts on natural, cultural, and other resources were evaluated. While the Preferred Alternative does have adverse impacts to riparian vegetation, Waters of the United States, and access to the river for recreation, the USIBWC has proposed mitigation to restore over 35 acres of native riparian habitat on the floodplain. Mitigation would be part of required permits for construction. A Mitigated Finding of No Significant Impact has been prepared for the Preferred Alternative based on a review of the facts and analyses contained in the SEA.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Verdecchia, Natural Resources Specialist, USIBWC, 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4701, Fax: (915) 493–2428, email: *Elizabeth.Verdecchia@ibwc.gov.*

*Availability:* The electronic version of the Draft SEA is available from the USIBWC Web page: *https://www.ibwc.gov/EMD/EIS_EA_Public_Comment.html.*

Dated: May 16, 2017.

**Matt Myers,**

*Chief Legal Counsel.*

[FR Doc. 2017–11535 Filed 6–2–17; 8:45 am]

**BILLING CODE 7010–01–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–945]**

### Certain Network Devices, Related Software and Components Thereof (II) Notice of Correction Concerning; Final Determination of Violation of Section 337; Termination of Investigation; Issuance of Limited Exclusion Order and Cease and Desist Order

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Correction.

**SUMMARY:** Correction is made to notice 82 FR 21827–29 which was published on Wednesday, May 10, 2017, to clarify that the Commission found, *inter alia,* a violation with respect to claims 1, 2, 4, 5, 7, 8, 10, 13, 18, 56, and 64 of U.S. Patent No. 7,224,668 (''the '668 patent''). Any omission of claim 18 from the list of claims concerning the '668 patent is hereby corrected in the notice of termination and in the Commission opinion.

Issued: May 30, 2017.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2017–11487 Filed 6–2–17; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[OMB Number 1110–0046]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Currently Approved Collection; Friction Ridge Cards: Arrest and Institution FD–249; Applicant FD–258; Personal Identification FD–353; FBI Standard Palm Print FD–884; Supplemental Finger and Palm Print FD–884a

**AGENCY:** Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** Department of Justice (DOJ), Federal Bureau of Investigation,

Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gerry Lynn Brovey, Supervisory Information Liaison Specialist, FBI, CJIS, Resources Management Section, Administrative Unit, Module C–2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306 (facsimile: 304–625–5093). Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Friction Ridge Cards: Arrest and Institution; Applicant; Personal Identification; FBI Standard Palm Print; Supplemental Finger and Palm Print.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Agency form number: Forms FD–249 (Arrest and Institution), FD–258 (Applicant), and FD–353 (Personal Identification); FD–884 (FBI Standard Palm Print); FD–884a (Supplemental Finger and Palm Print) encompassed under OMB 1110–0046; CJIS Division, FBI, DOJ.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, state, federal and tribal law enforcement agencies; civil entities requesting security clearance and background checks. This collection is needed to collect information on individuals requesting background checks, security clearance, or those individuals who have been arrested for or accused of criminal activities. Acceptable data is stored as part of the Next Generation Identification System (NGI) of the FBI.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 78,479 respondents will complete each form within approximately 10 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 14.6 million total annual burden hours associated with this collection.

*If additional information is required contact:* Melody D. Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: May 31, 2017.

**Melody D. Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017–11518 Filed 6–2–17; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

**[CPCLO Order No. 001–2017]**

## Privacy Act of 1974; System of Records

**AGENCY:** United States Department of Justice.

**ACTION:** Notice of a New System of Records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Department of Justice (Department or DOJ) proposes to add a new DOJ system of records titled, ''DOJ Insider Threat Program Records (ITPR),'' JUSTICE/DOJ–018. In the **Federal Register** of May 31, 2017, the Department is rescinding its notice of an FBI system of records notice titled ''FBI Insider Threat Program Records,'' JUSTICE/FBI–023, published on September 19, 2016. This new DOJ-wide system of records will cover the records previously claimed under JUSTICE/FBI–023. This new system of records establishes certain Department-wide capabilities to detect, deter, and mitigate insider threats. Insiders are defined to include any person with authorized access to any United States Government resource to include personnel, facilities, information, equipment, networks, or systems. DOJ personnel assigned to the DOJ Insider Threat Prevention and Detection Program (ITPDP) will use the system to facilitate management of insider threat inquiries and activities associated with inquiries and referrals, identify potential threats to DOJ resources and information assets, track referrals of potential insider threats to internal and external partners, and provide statistical reports and meet other insider threat reporting requirements. Elsewhere in this **Federal Register**, DOJ is concurrently issuing a Notice of Proposed Rulemaking to exempt JUSTICE/DOJ–018 from certain provisions of the Privacy Act, and withdrawing the notice of proposed rulemaking regarding for JUSTICE/FBI–023, issued in CPCLO Order No. 008–2016.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by July 5, 2017.

**ADDRESSES:** The public, OMB, and Congress are invited to submit any comments to the U.S. Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, National Place Building, 1331 Pennsylvania Avenue NW., Suite 1000, Washington, DC 20530–0001, by facsimile at 202–307–0693, or email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. in your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Laurence Reed, DOJ Insider Threat

Program Manager, United States Department of Justice, Insider Threat Prevention and Detection Program, 145 N Street NE., Washington, DC 20002, 202–357–0165, *itp@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** The DOJ has created a system of records, known as the DOJ Insider Threat Program Records (ITPR), to manage insider threat matters within the DOJ. Executive Order (E.O.) 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,* issued October 7, 2011, requires Federal agencies to establish an insider threat detection and prevention program to ensure the security of Classified networks and the responsible sharing and safeguarding of Classified information, consistent with appropriate protections for privacy and civil liberties. This system of records has been established to enable the DOJ to implement the requirements of E.O. 13587, to meet operating capability requirements as defined by the *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012), and to fulfill responsibilities under DOJ Order 0901, *Insider Threat* (Feb. 12, 2014). For an overview of the Privacy Act, see: *https://www.justice.gov/opcl/privacy-act-1974.*

The Presidential Memorandum—*National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012)—states that an insider threat is the threat that any person with authorized access to any United States Government resource, to include personnel, facilities, information, equipment, networks or systems, will use her/his authorized access, wittingly or unwittingly, to do harm to the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of departmental resources or capabilities.

The DOJ ITPR may include information lawfully obtained by the DOJ from any United States Government component, from other domestic or foreign government entities, or from private entities, which is necessary to identify, analyze, or resolve insider threat matters.

In accordance with the Privacy Act requirements of 5 U.S.C. 552a(r), the Department of Justice has provided a report to OMB and to Congress on this new system of records.

Dated: May 19, 2017.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

**JUSTICE/DOJ–001**

**SYSTEM NAME AND NUMBER:**

DOJ Insider Threat Program Records (ITPR), JUSTICE/DOJ–001.

**SYSTEM CLASSIFICATION:**

This system includes both Classified and Unclassified information.

**SYSTEM LOCATION:**

Records may be maintained at all locations at which the Department of Justice (DOJ) operates or at which DOJ operations are supported, including: Robert F. Kennedy Main Justice Department Building, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001; Federal Bureau of Investigation J. Edgar Hoover Building, 935 Pennsylvania Avenue NW., Washington, DC 20535–0001; Bureau of Alcohol, Tobacco, Firearms and Explosives, 99 New York Avenue NE., Washington, DC 20226; and other DOJ components, field offices, information technology centers, and other locations as listed on the DOJ and DOJ components' Internet Web sites, including *https://www.justice.gov.* Some or all system information may also be duplicated at other locations where the DOJ has granted direct access for support of DOJ missions, for purposes of system backup, emergency preparedness, and/or continuity of operations.

**SYSTEM MANAGER AND ADDRESS:**

DOJ Insider Threat Program Manager, United States Department of Justice, Insider Threat Prevention and Detection Program, 145 N Street NE., Washington, DC 20002, 202–357–0165, *itp@usdoj.gov.*

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

E.O. 12968, *Access to Classified Information,* issued August 2, 1995, 60 FR 40245 (Aug. 7, 1995), as amended by E.O. 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information,* issued June 30, 2008, 73 FR 38103 (July 2, 2008); E.O. 13526, *Classified National Security Information,* issued December 29, 2009, 75 FR 707 (Jan. 5, 2010); E.O. 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information,* issued October 7, 2011, 76 FR 63811 (Oct. 13, 2011); and Presidential Memorandum, *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012).

DOJ Order 901, *Insider Threat* (Feb. 12, 2014), also directs the head of each Department Component to implement DOJ policy and minimum standards issued pursuant to this policy and in coordination with the DOJ ITPDP and ''[p]romulgate additional Component guidance, if needed, to reflect unique mission requirements consistent with meeting the minimum standards and guidance issued pursuant to this policy.''

**PURPOSE(S) OF THE SYSTEM:**

This system of records is used by DOJ employees and contractors to monitor, detect, deter, and/or mitigate DOJ insider threats. The DOJ has established the DOJ ITPDP and this system of records in order to implement the requirements of E.O. 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information* (Oct. 7, 2011), and the *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012). These authorities require agencies with access to Classified information to establish certain capabilities for detecting, deterring, and/or mitigating insider threats, including: Accessing, gathering, integrating, assessing, and sharing information and data derived from offices across the organization for centralized analysis, reporting, and response; monitoring user activity on classified computer networks controlled by the Federal Government; evaluating personnel security information; and establishing procedures for insider threat response actions, such as inquiries to clarify or resolve insider threat matters.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The categories of individuals covered by this system are DOJ insiders, defined as any person with authorized access to any DOJ resource to include personnel, facilities, information, equipment, networks or systems. Such persons include but are not limited to present and former DOJ employees, members of joint task forces under the purview of the DOJ, contractors, detailees, assignees, interns, visitors, and guests.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

An insider threat is defined as the threat that any person with authorized access to any DOJ resource, to include personnel, facilities, information, equipment, networks or systems, will use his/her authorized access, wittingly or unwittingly, to do harm to the security of the United States. This threat can include damage to the United States through espionage, terrorism, unauthorized disclosure of national security information, or through the loss or degradation of DOJ resources or capabilities. *See* Presidential Memorandum, *National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs* (Nov. 21, 2012). The Minimum Standards state that Agency heads shall direct Counterintelligence, Security, Information Assurance, Human Resources, and other relevant organizational components to securely provide insider threat program personnel regular, timely, and, if possible, electronic access to the information necessary to identify, analyze, and resolve insider threat matters. Such access and information includes, but is not limited to, the following:

A. All relevant counterintelligence and security databases and files, including personnel security files, polygraph examination reports, facility access records, security violation files, travel records, foreign contact reports, and financial disclosure filings;

B. All relevant Unclassified and Classified network information generated by Information Assurance elements, including, but not limited to, personnel usernames and aliases, levels of network access, audit data, unauthorized use of removable media, print logs, and other data needed for clarification or resolution of an insider threat concern; and

C. All relevant Human Resources databases and files including, but not limited to, personnel files, payroll and voucher files, outside work and activities requests, disciplinary files, and personal contact records, as may be necessary for resolving or clarifying insider threat matters.

Records in the ITPR system consist of information necessary to identify, analyze, or resolve insider threat matters, including the information listed above or information derived from such information.

**RECORD SOURCE CATEGORIES:**

Information may be provided by individuals covered by this system, the DOJ or other United States Government components, other domestic and foreign government entities, or obtained from private entities.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To a governmental entity lawfully engaged in collecting law enforcement, law enforcement intelligence, or national security intelligence information for such purposes when determined to be relevant by the DOJ.

B. To any person, organization, or governmental entity in order to notify them of a potential terrorist threat for the purpose of guarding against or responding to such threat.

C. To any entity or individual where there is reason to believe the recipient is or could become the target of a particular criminal activity, conspiracy, or other threat, to the extent the information is relevant to the protection of life, health, or property. Information may similarly be disclosed to other recipients to the extent the information is relevant to the protection of life, health, or property.

D. To any person or entity if necessary to elicit information or cooperation from the recipient for use by the DOJ in the performance of an authorized law enforcement, national security, or intelligence function.

E. Violations of Law, Regulation, Rule, Order, or Contract. If any system record, alone, or in conjunction with other information, indicates a violation or potential violation of law (whether civil or criminal), regulation, rule, order, or contract, the pertinent record may be disclosed to the appropriate entity (whether federal, state, local, joint, tribal, foreign, or international) that is charged with the responsibility of investigating, prosecuting, implementing and/or enforcing such law, regulation, rule, order, or contract.

F. Complainants and Victims. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigations or cases arising from the matters of which they complained and/or of which they were victims.

G. Courts or Adjudicative Bodies. To a court, grand jury, or administrative or adjudicative body, in matters in which (a) the DOJ or any DOJ employee in his or her official capacity, (b) any DOJ employee in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (c) the United States, is or could be a party to the litigation, is likely to be affected by the litigation, or has an official interest in the litigation, and disclosure of system records has been determined by the DOJ to be arguably relevant, or by the adjudicator to be relevant, to the litigation. Similar disclosures may be made in the situations stated above related to assistance provided to the Federal Government by non-DOJ employees (see Routine Use J).

H. Parties. To an actual or potential party to litigation or his or her attorney or authorized representative for the purpose of negotiating or discussing such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings, in matters in which the DOJ has an official interest and in which the DOJ determines records in the system to be arguably relevant.

I. Appropriate Disclosures to the Public. To the news media or members of the general public in furtherance of a legitimate law enforcement or public safety function as determined by the DOJ (*e.g.,* to assist in locating fugitives; to provide notifications of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or DOJ matters or other matters of legitimate public interest) where disclosure could not reasonably be expected to constitute an unwarranted invasion of personal privacy. (The availability of information in pending criminal or civil cases will be governed by the provisions of 28 CFR 50.2.)

J. Non-DOJ Employees. To contractors, grantees, experts, consultants, students, or others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

K. To designated officers and employees of state, local (including the District of Columbia), territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or

occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant to the recipient agency's decision.

L. To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

M. The White House. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)), and, during Presidential transitions, the President-Elect and Vice-President-Elect and their designees for appointment, employment, security, and access purposes compatible with the purposes for which the records were collected by the DOJ, *e.g.,* disclosure of information to assist the White House in making a determination whether an individual should be: (1) Granted, denied, or permitted to continue in employment on the White House Staff; (2) given a Presidential appointment or Presidential recognition; (3) provided access, or continued access, to classified or sensitive information; or (4) permitted access, or continued access, to personnel or facilities of the White House/EOP complex. System records may be disclosed also to the White House and, during Presidential transitions, to the President-Elect and Vice-President-Elect and their designees, for Executive Branch coordination of activities that relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President, President-Elect, Vice-President or Vice-President-Elect. System records or information may also be disclosed during a Presidential campaign to a major-party Presidential candidate, including the candidate's designees, to the extent the disclosure is reasonably related to a clearance request submitted by the candidate for the candidate's transition team members pursuant to Section 7601 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended.

N. Former Employees. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, local, tribal, or territorial government entity or professional licensing authority, in accordance with applicable DOJ regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the DOJ requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility. (Such disclosures will be effected under procedures established in 28 CFR 16.300–301 and DOJ Order 2710.8C, including any future revisions.)

O. To federal, state, local, tribal, territorial, foreign, or international licensing agencies or associations when the DOJ determines the information is relevant to the suitability or eligibility of an individual for a license or permit.

P. Members of Congress. To a Member of Congress or a person on his or her staff acting on the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

Q. National Archives and Records Administration (NARA) Records Management. To the National Archives and Records Administration (NARA) for purposes of records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

R. To appropriate agencies, entities, and persons when (1) DOJ suspects or has confirmed that there has been a breach of the system of records; (2) DOJ has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOJ (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOJ's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

S. To another Federal agency or Federal entity, when DOJ determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

T. To such agencies, entities, or persons as is necessary to ensure the continuity of government functions in the event of any actual or potential disruption of normal government operations. This use encompasses all manner of such situations in which government operations may be disrupted, including: Military, terrorist, cyber, or other attacks, natural or manmade disasters, and other national or local emergencies; inclement weather and other acts of nature; infrastructure/utility outages; failures, renovations, or maintenance of buildings or building systems; problems arising from planning, testing or other development efforts; and other operational interruptions. This also includes all related pre-event planning, preparation, backup/redundancy, training and exercises, and post-event operations, mitigation, and recovery.

U. To an agency of a foreign government or international agency or entity where the DOJ determines that the information is relevant to the recipient's responsibilities, dissemination serves the best interests of the United States Government, and where the purpose in making the disclosure is compatible with the purpose for which the information was collected.

V. Auditors. To any agency, organization, or individual for the purposes of performing authorized audit or oversight operations of the DOJ and meeting related reporting requirements.

W. As Mandated by Law. To such recipients and under such circumstances and procedures as are mandated by Federal statute, treaty, or other source of applicable law.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records in this system are stored on paper and/or in electronic form. Electronic records are stored in enterprise information technology platforms and networks, databases and/or on hard disks, removable storage devices, or other electronic media. Paper records may be stored in individual file folders and file cabinets with controlled access, or other appropriate GSA-approved security containers. Classified information is stored in accordance with applicable legal, administrative, and other requirements.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Information in this system may be retrieved by an individual's name, user ID, email address, Social Security number, unique employee identifier, as well as by use of key word search terms, including the names of persons with

whom covered individuals have interacted or to whom they have been linked.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are maintained and destroyed in accordance with applicable schedules and procedures issued or approved by NARA.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records are maintained in secure, restricted areas and are accessed only by personnel who have a need for the records in the performance of their duties and have been authorized to access them. Physical security protections include guarded and locked facilities requiring badges and passwords for access and other physical and technological safeguards (such as role-based access and strong passwords) to prevent unauthorized access. All visitors must be accompanied by authorized staff personnel at all times. Highly Classified or sensitive information is electronically transmitted on secure lines and in encrypted form to prevent interception and interpretation. Users accessing system components through mobile or portable computers or electronic devices such as laptop computers, multi-purpose cell phones, and personal digital assistants (PDAs) must comply with the DOJ's remote access policy, which requires encryption. All DOJ employees receive a complete background investigation prior to being hired. Other persons with authorized access to system records receive comparable vetting. All personnel are required to undergo privacy and annual information security training, and are cautioned about divulging confidential information or any information contained in DOJ files. Failure to abide by this provision violates DOJ regulations and may violate certain civil and criminal statutes providing for penalties of fine or imprisonment or both. As a condition of employment, DOJ personnel also sign nondisclosure agreements which encompass, as appropriate, Classified and Unclassified information and remain in force even after DOJ employment. Employees who resign or retire are also cautioned about divulging information acquired in their DOJ capacity.

**RECORD ACCESS PROCEDURES:**

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the DOJ in its sole discretion.

A request for access to a record from this system of records must be submitted in writing and comply with 28 CFR part 16, and should be sent to the Office of Information Policy, 1425 New York Avenue NW., Suite 11050, Washington, DC 20530–0001. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ–361) for use in certification of identity from the FOIA/Privacy Act Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530–0001, or from the Department's Web site at *https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/cert_ind.pdf.*

**CONTESTING RECORD PROCEDURES:**

The Attorney General has exempted this system of records from the notification, access, amendment, and contest procedures of the Privacy Act. These exemptions apply only to the extent that the information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Where compliance would not appear to interfere with or adversely affect the purposes of the system, or the overall law enforcement/intelligence process, the applicable exemption (in whole or in part) may be waived by the DOJ in its sole discretion.

Individuals desiring to contest or amend information maintained in the system should direct their requests according to the **RECORD ACCESS PROCEDURES** listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. The envelope and letter should be clearly marked ''Privacy Act Amendment Request'' and comply with 28 CFR 16.46.

**NOTIFICATION PROCEDURES:**

Same as the **RECORD ACCESS PROCEDURES**, above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

The Attorney General has exempted this system of records from subsection (c)(3) and (4); (d)(1), (2), (3) and (4); (e)(1), (2), and (3); (e)(4)(G), (H) and (I); (e)(5) and (8); (f) and (g) of the Privacy Act. These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j) or (k). Rules are being promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and have been published in this **Federal Register**. In addition, the DOJ will continue in effect and claim all exemptions claimed under 5 U.S.C. 552a(j) or (k) (or other applicable authority) by an originating agency from which the DOJ obtains records, where one or more reasons underlying an original exemption claim remain valid. Where compliance with an exempted provision does not appear to interfere with or adversely affect interests of the United States or other stakeholders, the DOJ in its sole discretion may waive an exemption in whole or in part; exercise of the discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the DOJ in its sole discretion may impose any restrictions deemed advisable by the DOJ (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

**HISTORY:**

None.

[FR Doc. 2017–11445 Filed 6–2–17; 8:45 am]

**BILLING CODE 4410–NW–P**

## DEPARTMENT OF JUSTICE

### U.S. Marshals Service

**[OMB Number 1105–NEW]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Proposed Collection; Comments Requested: Form USM–164, Applicant Reference Check Questionnaire

**AGENCY:** U.S. Marshals Service, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of

Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 4, 2017.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection (*check justification or form 83): New collection.

2. *The Title of the Form/Collection:* Form USM–164, Applicant Reference Check Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* USM–164.

*Component:* U.S. Marshals Service, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Individuals (supervisors, peers, subordinates).

*Abstract:* This form will primarily be used to collect applicant reference information. Reference checking is an objective evaluation of an applicant's past job performance based on information collected from key individuals (*e.g.* supervisors, peers, subordinates) who have known and worked with the applicant. Reference checking is a necessary supplement to the evaluation of resumes and other descriptions of training and experience, and allows the selecting official to hire applicants with a strong history of performance. The questions on this form have been developed following the OPM, MSPB, and DOJ ''Best Practice'' guidelines for reference checking.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 500 respondents will utilize the form, and it will take each respondent approximately 15–20 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 500 (total # of annual responses) * 20 minutes.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405A, Washington, DC 20530.

Dated: May 31, 2017.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2017–11552 Filed 6–2–17; 8:45 am]

**BILLING CODE 4410–04–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 5, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201701-1235-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) Housing Occupancy Certificate information collection. Any non-exempt person who owns or controls a facility or real property to be used for housing migrant agricultural workers cannot permit any such worker to occupy the housing unless a copy of a certificate of occupancy from the State, local, or Federal agency that conducted the housing safety and health inspection is posted at the site of the facility or real property. The certificate attests that the

facility or real property meets applicable safety and health standards. The housing provider must retain original copy of the certificate for three years and make it available for inspection. Form WH–520 is the form used when the WHD inspects and approves such housing. MSPA sections 203(b)(1) and 511 authorize this information collection. *See* 29 U.S.C. 1823(b)(1) and 1861.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0006.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 29, 2016 (81 FR 86018).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0006. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–WHD.

*Title of Collection:* Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act.

*OMB Control Number:* 1235–0006.

*Affected Public:* Private Sector—farms.

*Total Estimated Number of Respondents:* 100.

*Total Estimated Number of Responses:* 100.

*Total Estimated Annual Time Burden:* 7 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: May 12, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–11519 Filed 6–2–17; 8:45 am]

**BILLING CODE 4510–27–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Gear Certification Standard

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Gear Certification Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 5, 2017.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-1218-005* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Gear Certification Standard information collection requirements codified in regulations 29 CFR part 1919. Applicants submit an Application for Accreditation to Perform Gear Certification Functions (Form OSHA–70) in order to seek OSHA approval to test or examine certain equipment and material handling devices, as required under OSHA maritime regulations, 29 CFR part 1917 (Marine Terminals) and 29 CFR part 1918 (Longshoring). The OSHA uses this information to accredit companies to inspect and provide certification for cranes, derricks, and accessory gear used in the longshoring, marine terminal, and shipyard industries. Certain types of vessel cargo gear and shore-based material handling devices used in maritime operations are required to have accredited companies conduct examinations. The accredited company issues either (1) a certificate to the owner that the piece of equipment has passed the examination or (2) a certificate to the owner of any deficiency found during the examination. The owner is responsible for maintaining a copy of the certification record. Occupational Safety and Health Act sections 2(b)(9), 6, 8(c), and Longshoremen's and Harbor Workers' Compensation Act section

41(a) authorize this information collection. *See* 29 U.S.C. 651(b)(9), 655, 657(c); 33 U.S.C. 941(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0003.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2017. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 22, 2016 (81 FR 93963).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0003. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL–OSHA.

*Title of Collection:* Gear Certification Standard.

*OMB Control Number:* 1218–0003.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 8,740.

*Total Estimated Number of Responses:* 8,740.

*Total Estimated Annual Time Burden:* 203 hours.

*Total Estimated Annual Other Costs Burden:* $4,738,225.

Dated: May 30, 2017.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2017–11517 Filed 6–2–17; 8:45 am]

**BILLING CODE 4510–26–P**

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service™.

**ACTION:** Notice of revisions to an existing system of records.

**SUMMARY:** The United States Postal Service® (Postal Service) is proposing to revise the Customer Privacy Act Systems of Records (SOR). These changes are being made to improve our ability to meet customer and mailer needs for complete destination/shipping records, and to consistently provide accurate and reliable Proof of Delivery and recipient information.

**DATES:** These revisions will become effective without further notice on July 5, 2017 unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments may be mailed or delivered to the Privacy and Records Management Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 1P830, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service™ has determined that one Customer Privacy Act Systems of Records should be revised to modify categories of records in the system, purposes, retention and disposal, and system managers and addresses.

#### I. Background

Bulk Proof of Delivery (BPOD) provides commercial customers or mailers with the ability to receive signature proof of delivery records for applicable mailpieces without requesting them individually or attaching PS Form 3811, Domestic Return Receipt, on each mailpiece (if applicable). The Postal Service provides records by the delivery tracking data and the delivery date, with recipient information, producing letter facsimiles of delivery records, and presents those to the mailer or the mailer's approved third-party designee in Adobe PDF format electronically.

Proof of Delivery or Return Receipt Electronic (RRE) is a domestic special service that provides customers with an alternative to the PS Form 3811, Domestic Return Receipt. After purchasing a RRE, customers visit *USPS.com* to enter their item tracking number and the email address where they wish to receive their return receipt. After the item is delivered, the customer is sent a return receipt proof-of-delivery letter via email that includes the date and time of delivery, and recipient information.

#### II. Rationale for Changes to USPS Privacy Act Systems of Records

*Privacy Act System of Records 820.200, System Name:* Mail Management and Tracking Activity, is being revised to improve customer and mailer experience with shipping records that include Proof of Delivery information for mailpieces having a USPS Tracking and/or Special Services label and article numbers, by providing more accurate, complete and reliable delivery information.

#### III. Description of Changes to Systems of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect these amended systems of records to have any adverse effect on individual privacy rights. The affected systems are as follows:

**USPS 820.200**

**SYSTEM NAME:**

Mail Management and Tracking Activity

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM**

*[CHANGE TO READ OR RENUMBER]*

* * * * *

2. *Identification information:* Customer ID(s), last four digits of Social Security Number (SSN), mailer ID, advertiser name/ID, username, and password.

3. *Recipient information:* Name, address and signature of recipient or image of recipient signature.

4. *Data on mailings:* Paper and electronic data on mailings, including postage statement data (such as volume, class, rate, postage amount, date and time of delivery, mailpiece count), destination of mailing, delivery status, mailing problems, presort information, reply mailpiece information, container label numbers, package label, Special Services label article number or USPS Tracking number, and permit numbers.

5. *Payment information:* Credit and/or debit card number, type, and expiration date; ACH information.

6. *Customer preference data:* Hold Mail begin and end date, redelivery date, delivery options, shipping and pickup preferences, drop ship codes, comments and instructions, Bulk Proof of Delivery, Hold For Pickup requests or redirection of mailpieces with a USPS Tracking and/or Special Services label and article number, mailing frequency, preferred delivery dates, and preferred means of contact.

7. *Product usage information:* Special Services label and article number.

8. *Mail images:* Images of mailpieces captured during normal mail processing operations

* * * * *

**PURPOSES**

*[CHANGE TO READ]*

* * * * *

8. To provide accurate and reliable delivery information.

9. To provide shipping records for mailpieces with a USPS Tracking and/or Special Service label and article number.

* * * * *

**RETRIEVABILITY**

*[CHANGE TO READ]*

By customer name, customer ID(s), logon ID, mailing address(es), 11-digit ZIP Code, any Intelligent Mail barcode, USPS Tracking number or Special Service label and article number.

**RETENTION AND DISPOSAL**

*[CHANGE TO READ]*

1. IMb Tracing® records are retained for up to 7 days.

**SYSTEM MANAGER(S) AND ADDRESS**

*[CHANGE TO READ]*

Chief Customer and Marketing Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

[FR Doc. 2017–11489 Filed 6–2–17; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80813; File No. SR–NASDAQ–2017–055]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2017, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Rule 7000A series relating to the Order Audit Trail System, Rule 8211 and Chapter IX, Section IV relating to Electronic Blue Sheets, Chapter VII, Section VII relating to account identification, and Chapter V, Section VII relating to the Consolidated Options Audit Trail System to reflect changes to these rules once members are effectively reporting to the Consolidated Audit Trail (''CAT'') and the CAT's accuracy and reliability meets certain standards as described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Rule 7000A series relating to the Order Audit Trail System (''OATS''), Rule 8211 and Chapter IX, Section IV relating to Electronic Blue Sheets (''EBS''), Chapter VII, Section VII relating to account identification, and Chapter V, Section VII relating to the Consolidated Options Audit Trail System (''COATS'') to reflect changes to these rules once members are effectively reporting to the CAT, and the CAT's accuracy and reliability meets certain standards as described below.[3]

Background

Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[4] and Rule 608 of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed rule change on May 15, 2017 (SR–NASDAQ–2017–050). On May 26, 2017, the Exchange withdrew that filing and submitted this filing.

[4] 15 U.S.C. 78k–1.

Regulation NMS thereunder,[5] the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[6] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[7] The Plan was published for comment in the **Federal Register** on May 17, 2016,[8] and approved by the Commission, as modified, on November 15, 2016.[9] On March 15, 2017, the Commission approved the new Nasdaq Rule 6800 Series and Chapter IX, Section 8 to implement provisions of the CAT NMS Plan that are applicable to Nasdaq members.[10]

The CAT NMS Plan is designed to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.'' [11] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [12] Finally, the Plan requires the rule filing to discuss the following:

(i) Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

(ii) whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.[13]

Changes to OATS

In response to these requirements, Nasdaq is proposing to delete the Rule 7000A Series (the ''OATS Rules'') from the Nasdaq rulebook once the CAT achieves the specific accuracy and reliability standards described below, and Nasdaq has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations,[14] and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.[15]

Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [16] Nasdaq believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired to account for information being available in the CAT.

As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (*i.e.,* data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that ''error rates after reprocessing of error corrections will be de minimis.'' [17] The Participants based this Error Rate on their consideration of ''current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.'' [18]

Nasdaq agrees with the Participants' conclusion that a 5% pre-correction threshold ''strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible.'' [19] However, Nasdaq believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by Nasdaq to conduct surveillance. Although Nasdaq is proposing to measure the appropriate error rates in the aggregate, rather than firm-by-firm, Nasdaq believes that the error rates for equity securities should be measured separately from options since options

[5] 17 CFR 242.608.

[6] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[7] 17 CFR 242.613.

[8] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[9] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[10] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–NASDAQ–2017–008).

[11] CAT NMS Plan, Appendix C, Section C.9.

[12] *See id.*

[13] *See id.*

[14] As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants ''worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.'' *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they ''will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' *Id.*

[15] Nasdaq notes that the OATS Rules were originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the National Association of Securities Dealers, Inc. for failure to adequately enforce its rules. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998). In approving the OATS Rules, the Commission concluded that OATS satisfied the conditions of the SEC's order and was consistent with the Exchange Act. *See id.* at 12566–67.

[16] *See id.* [sic]

[17] *See* CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

[18] *Id.*

[19] *Id.*

orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, Nasdaq is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).[20] Nasdaq is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Nasdaq believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

Nasdaq is proposing to use error rates in each the following categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met:

• *Rejection Rates and Data Validations.* Data validations for the CAT, while not expected to be designed the same as OATS, must be functionally equivalent to OATS in accordance with the CAT NMS Plan (*i.e.,* the same types of basic data validations must be performed by the Plan Processor to comply with the CAT NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations [21] and syntax and context checks be performed on all submitted records.[22] If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.[23] The specific validations can be determined only after the Plan Processor has finalized the Industry Member Technical Specifications; however, the Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.[24] Nasdaq is proposing that, over the 180-day period, aggregate rejection rates (measured separately for equities and options) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.

• *Intra-Firm Linkages.* The Plan requires that ''the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order.'' [25] At a minimum, this requirement includes the creation of an order lifecycle between ''[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS).'' [26] Nasdaq is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.

• *Inter-Firm Linkages.* The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.[27] Nasdaq is proposing that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.[28]

• *Order Linkage Rates.* In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.[29] For example, the Plan requires linkages between customer orders and ''representative'' orders created in firm accounts for the purpose of facilitating a customer order, various legs of option/equity complex orders, riskless principal orders, and orders worked through average price accounts.[30] Nasdaq is proposing that there be at least a 95% pre-correction and 98% post-correction linkage rate for multi-legged orders (*e.g.,* related equity/options orders, VWAP orders, riskless principal transactions).

• *Exchange and TRF/ORF Match Rates.* The Plan requires that an order lifecycle be created to link ''[o]rders routed from broker-dealers to exchanges'' and ''[e]xecuted orders and trade reports.'' [31] Nasdaq is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

In addition to these minimum error rates and matching thresholds that generally must be met before OATS can be retired, Nasdaq believes that during the minimum 180-day period during which the thresholds are calculated, Nasdaq's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Nasdaq believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Small Industry Member Data Availability

The second issue the Plan requires the proposed rule change to address is ''whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.''

Nasdaq believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Although Technical Specifications for Industry Members are not yet available, Nasdaq believes it would be inefficient, less reliable, and more costly to attempt to marry the OATS and CAT databases for a temporary period to allow some Nasdaq members to report to CAT while others

[20] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, Appendix C, Section A.2(a).

[21] *See* CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid Exchange[sic]-Assigned Market Participant Identifier, and verification of the number of records in the file. *Id.*

[22] *See id.* The Plan notes that syntax and context checks would include format checks (*i.e.,* that data is entered in the specified format); data type checks (*i.e.,* that the data type of each attribute conforms to the specifications); consistency checks (*i.e.,* that all attributes for a record of a specified type are consistent); range/logic checks (*i.e.,* that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (*i.e.,* that each attribute for every record has an acceptable value); completeness checks (*i.e.,* that each mandatory attribute for every record is not null); and timeliness checks (*i.e.,* that the records were submitted within the submission timelines). *Id.*

[23] *See id.*

[24] *See id.*

[25] CAT NMS Plan, Appendix D, Section 3.

[26] *Id.*

[27] *Id.*

[28] This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

[29] *See* CAT NMS Plan, Appendix D, Section 3.

[30] *See id.*

[31] *Id.*

continue to report to OATS. Consequently, Nasdaq has concluded at this time that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS. For this reason, Nasdaq supports an amendment to the Plan that would require current OATS Reporters that are ''Small Industry Members'' to report two years after the Effective Date (instead of three). Nasdaq intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

Nasdaq has identified approximately 300 member firms that currently report to OATS and meet the definition of ''Small Industry Member;'' however, only ten of these firms submit information to OATS on their own behalf, and eight of the ten firms report very few orders to OATS.[32] The vast majority of these 300 firms use third parties to fulfill their reporting obligations, and many of these third parties will begin reporting to CAT in November 2018. Consequently, Nasdaq believes that the burden on current OATS Reporters that are ''Small Industry Members'' would not be significant if those firms are required to report to CAT beginning in November 2018 rather than November 2019. The burdens, however, are significantly greater for those firms that are not reporting to OATS currently; therefore, Nasdaq does not believe it would be necessary or appropriate to accelerate CAT reporting for ''Small Industry Members'' that are not currently reporting to OATS, and Nasdaq would not support an amendment to the Plan to accelerate CAT reporting for ''Small Industry Members'' that are not currently OATS Reporters.

Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.''

As described above, Nasdaq believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (*e.g.,* OATS) if it is also accurately and reliably reporting to the CAT. Nasdaq believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, Nasdaq supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.

Changes to EBS and Account Identification Rules

The EBS rule is Nasdaq's rule regarding the automated submission of specific trading data to Nasdaq upon request using the Electronic Blue Sheet system. Rule 8211 applies to EBS reporting for equity securities, while Chapter IX, Section 4 applies EBS reporting to options. Rule 8211 and Chapter IX, Section 4 require members to submit certain trade information as prescribed by Nasdaq Regulation, including, for proprietary transactions, the clearing house number or alpha symbol of the member submitting the data, the identifying symbol assigned to the security, and the date the transaction was executed.

Chapter VII, Section VII imposes certain account identification requirements on Market Makers. Specifically, Chapter VII, Section VII requires, among other things, that each Market Maker shall file with Nasdaq Regulation and keep current a list identifying all accounts for stock, options and related securities trading in which the Market Maker may, directly or indirectly, engage in trading activities or over which it exercises investment discretion. The rule also prohibits a Market Maker from engaging in stock, options or related securities trading in an account which has not been reported pursuant to this rule.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, Nasdaq will not need to use the EBS system or request information pursuant to these rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, these rules cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Nasdaq Regulation staff may still need to request information pursuant to these rules for trading activity occurring before a member was reporting to the CAT.[33] In addition, these rules apply to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, these rules must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to Rule 8211, Chapter VII, Section VII and Chapter IX, Section 4 to clarify how Nasdaq will request data under these rules after members are reporting to the CAT. Specifically, the proposed Supplementary Material to these rules will note that Nasdaq Regulation will request information under these rules only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, Nasdaq Regulation will make requests under these rules if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[34] Accordingly, as discussed in more detail below, Nasdaq believes that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed

[32] For example, in one recent month, eight of the ten firms submitted fewer than 100 reports during the month, with four firms submitting fewer than 50.

[33] Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. *See* 17 CFR 240.17a–3(a), 240.17a–4.

[34] *Id.* [sic]

error rate thresholds have been met, and Nasdaq has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Nasdaq believes CAT Data should not be used in place of EBS data until all Participants and Industry Members are reporting data to CAT. In this way, Nasdaq will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [35] Nasdaq believes that the submission of data to the CAT by Small Industry Members a year earlier than is required in the CAT NMS Plan, at the same time as the other Industry Members, would expedite the replacement of EBS data with CAT Data, as Nasdaq believes that the CAT would then have all necessary data from the Industry Members for Nasdaq to perform the regulatory surveillance that currently is performed via EBS. For this reason, Nasdaq supports amending the CAT NMS Plan to require Small Industry Members to report data to the CAT two years after the Effective Date (instead of three), and intends to work with other Participants toward that end.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [36] Nasdaq believes that a single cut-over from EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the EBS requirements on a firm-by-firm basis. Nasdaq believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Nasdaq does not believe that such exemptions would be an appropriate use of limited resources. Moreover, the primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to comply with EBS if it is also accurately and reliably reporting to the CAT. Nasdaq believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to EBS, and as discussed above, by accelerating Small Industry Members to report on the same timeframe as all other Industry Members, there is no need to exempt members from EBS requirements on a firm-by-firm basis.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [37] Nasdaq believes that it is critical that the CAT Data be sufficiently accurate and reliable for Nasdaq to perform the regulatory functions that it now performs via EBS. Accordingly, Nasdaq believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Nasdaq believes that, before CAT Data may be used in place of EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[38] Nasdaq proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Nasdaq believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Nasdaq proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line with the proposed retirement threshold for other systems, such as OATS and COATS.

In addition to these minimum error rates before using CAT Data instead of EBS data, Nasdaq believes that during the minimum 180-day period during which the thresholds are calculated, Nasdaq's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Nasdaq believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Changes to COATS

The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, Nasdaq and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

Nasdaq adopted Chapter V, Section 7 to implement certain reporting requirements related to COATS, and therefore proposes to eliminate the information reporting requirements of that rule and replacing those requirements with a requirement that members report information pursuant to this rule as required by the Exchange's CAT compliance rule, Chapter IX, Section 8.[39] Among other things,

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

[39] COATS was developed to comply with an order of the Commission requiring the then-options exchanges to ''design and implement'' a

Chapter V, Section 7 requires an Options Participant to ensure that each options order received from a Customer for execution on the Nasdaq Options Market is recorded and time-stamped immediately, and also at the time of any modification or cancellation of the order. The rule also specifies the information that must be contained at a minimum, including a unique order identification, the underlying security, opening/closing designation, the identity of the Clearing Participant, and the Options Participant identification.

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[40] As discussed in more detail below, Nasdaq and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Nasdaq has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Nasdaq believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, Nasdaq will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [41] The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [42] Nasdaq believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. Nasdaq and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Nasdaq and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [43] Nasdaq believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, Nasdaq believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Nasdaq and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[44] Nasdaq proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Nasdaq believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Nasdaq proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, Nasdaq proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for OATS.

In addition to these minimum error rates before COATS can be retired, Nasdaq believes that during the minimum 180-day period during which the thresholds are calculated, Nasdaq's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Nasdaq to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Nasdaq believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, Nasdaq will

consolidated audit trail to ''enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.'' *See* Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the ''Order''). *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Nasdaq has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. Once the CAT is fully operational, it will be appropriate to delete Nasdaq's rules implemented to comply with the Order as duplicative of the CAT. Accordingly, Nasdaq believes that it would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

[40] *Id.* [sic]

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

announce the implementation date of the proposed rule change in a *Regulatory Notice* that will be published once Nasdaq concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[45] in general, and furthers the objectives of Section 6(b)(5) of the Act,[46] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq believes that the proposed rule change fulfills the obligation in the CAT NMS Plan for Nasdaq to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [47] As this proposal implements the Plan, Nasdaq believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for Nasdaq and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, Nasdaq believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that Nasdaq is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Exchange Act [48] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Nasdaq notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist Nasdaq in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their rules related to OATS, EBS and COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Although written comments on the proposed rule change were not solicited, two commenters, the Financial Information Forum (''FIF'') and the Securities Industry and Financial Markets Association (''SIFMA''), submitted letters to the Participants regarding the retirement of systems related to the CAT.[49] In its comment letter, with regard to the retirement of duplicative systems more generally, FIF recommends that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommends that, once a CAT Reporter achieves satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believes that these recommendations ''would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight.'' [50] In its comments about EBS specifically, FIF states that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of the EBS system.[51] Similarly, SIFMA states that ''the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems,'' and ''recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems.'' [52]

As discussed above, Nasdaq agrees with the commenters that the OATS, EBS and COATS reporting requirements should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, Nasdaq anticipates that the CAT will be designed to collect the data necessary to permit the retirement of OATS, EBS and COATS. As discussed above, Nasdaq disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality; however, Nasdaq supports amendments to the CAT NMS Plan that would accelerate reporting for Small Industry Members that are currently reporting to OATS to facilitate the retirement of that system.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] Approval Order at 84697.

[48] 15 U.S.C. 78f(b)(8).

[49] Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017 (''FIF Letter''); Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017 (''SIFMA Letter''), at 2.

[50] FIF Letter at 2.

[51] *Id.*

[52] SIFMA Letter at 2.

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2017–055 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2017–055. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2017–055 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11507 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[53] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80815; File No. SR–MRX–2017–02]**

## Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Proposed Rule Change in Connection With a System Migration to Nasdaq INET Technology

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2017, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various rules in connection with a system migration to Nasdaq INET technology.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this rule change is to amend certain rules to reflect the MRX technology migration to a Nasdaq, Inc. (''Nasdaq'') supported architecture. INET is the proprietary core technology utilized across Nasdaq's global markets and utilized on The NASDAQ Options Market LLC (''NOM''), NASDAQ PHLX LLC (''Phlx'') and NASDAQ BX, Inc. (''BX'') (collectively, ''Nasdaq Exchanges''). The migration of MRX to the Nasdaq INET architecture would result in higher performance, scalability, and more robust architecture. With this system migration, the Exchange intends to adopt certain trading functionality currently utilized at Nasdaq Exchanges. The functionality being adopted is described in this filing.

The Exchange is also separately filing[3] a rule change to amend the Exchange's Opening Process. MRX will replace its current opening process at Rule 701 with Phlx's Opening Process.[4]

The Exchange intends to begin implementation of the proposed rule changes in Q3 2017. The migration will be on a symbol by symbol basis, and the Exchange will issue an alert to members in the form of an Options Trader Alert to provide notification of the symbols that will migrate and the relevant dates.

Generally

With the re-platform, the Exchange will now be built on the Nasdaq INET architecture, which allows certain trading system functionality to be performed in parallel. The Exchange believes that this architecture change will improve the member experience by reducing overall latency compared to the current MRX system because of the manner in which the system is segregated into component parts to handle processing.

Trading Halts

Cancellation of Quotes

The Exchange proposes to amend MRX Rule 702 entitled ''Trading Halts.'' Specifically, the Exchange proposes to amend Rule 702(a)(2) to note that during a halt, the Exchange will maintain existing orders on the book, but not existing quotes prior to the halt, accept orders and quotes, and process cancels and modifications for quotes and orders, except that existing quotes are cancelled. Today, MRX maintains existing orders and quotes during a trading halt. With respect to cancels and modifications, this behavior will not change. MRX does not have a quote

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–MRX–2017–01 (not yet published).

[4] *See* Phlx Rule 1017. *See also* Securities Exchange Act Release No. 79274 (November 9, 2016), 81 FR 80694 (November 16, 2016) (SR–Phlx–2017–79) (notice of Filing of Partial Amendment No. 2 and Order Granting Approval of a Proposed Rule Change, as Modified by Partial Amendment No. 2, to Amend PHLX Rule 1017, Openings in Options).

purge today, so this functionality will be changed with the adoption of this trading rule. The Exchange believes that purging quotes upon a halt will remove uncertainty for market participants.

The Exchange proposes to conform the treatment of quotes and orders on MRX to Phlx Rule 1047(f) in conjunction with the replatform of MRX. The Exchange desires to handle halts in a similar manner as Phlx.

Limit Up-Limit Down

The Exchange also proposes to add new MRX Rule 702(d) to replace rule text currently contained in MRX Rule 703A entitled ''Trading During Limit Up-Limit Down States in Underlying Securities.'' Proposed MRX Rule 702(d) is similar to language currently in Phlx Rule 1047(d), which provides for Exchange handling due to extraordinary market volatility. Currently MRX Rule 703A(a) and (b) provides modified order handling procedures when a security underlying an options class traded on the Exchange enters a Limit State or Straddle State under the Plan to Address Extraordinary Market Volatility (the ''Plan'').[5] Specifically, during a Limit State or Straddle State: (1) Incoming Market Orders are automatically rejected, and all unexecuted Market Orders pending in the system are cancelled, and (2) incoming Stop Orders (which become Market Orders if elected) are automatically rejected, and unexecuted Stop Orders pending in the system cannot be elected and will be held until the end of the Limit State or Straddle State. In addition, MRX Rule 703A(c) provides that when the security underlying an option class is in a Limit State or Straddle State, the maximum quotation spread requirements for market maker quotes contained in MRX Rule 803(b)(4) and the continuous quotation requirements contained in MRX Rule 804(e) shall be suspended.[6]

With the re-platform, the Exchange will adopt opening limitation, Market Order and Stop Order handling consistent with handling today on Phlx.[7] Specifically, proposed MRX Rule 702(d) will provide that during a Limit State and Straddle State in the Underlying NMS stock: (i) The Exchange will not open an affected option, (ii) provided the Exchange has opened an affected option for trading, the Exchange shall reject Market Orders, as defined in MRX Rule 715(a), and shall notify Members of the reason for such rejection, and (iii) provided the Exchange has opened an affected option for trading, the Exchange will elect Stop Orders if the condition is met, and, because they become Market Orders, shall cancel them back and notify Members of the reason for such rejection. The language in proposed MRX Rule 703(d)(iv) [sic] concerning the maximum quotation spread requirements for market maker quotes and the continuous quotation requirements suspensions are the same language currently contained in MRX Rule 703A(c).

These amendments differ in certain respects from the manner in which MRX operates today during a Limit State or Straddle State. The current MRX rule does not address the opening. The Exchange proposes to adopt rule text to provide for how the Exchange shall treat the Opening Process.[8] The opening in an option will not commence in the event that the underlying NMS stock is open, but has entered into a Limit State or Straddle State. If this occurs, the opening will only commence and complete if the underlying NMS stock stays out of a Limit or Straddle State. Accordingly, proposed MRX Rule 702(d)(i) [sic] will provide that the Exchange will not open an affected option. As a result, if an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer occurring.

In addition, MRX currently cancels Market Orders pending in the system upon initiation of a Limit or Straddle State. Under the proposal to adopt the Phlx rule and implementation of the Limit Up-Limit Down procedures, Market Orders pending in the system will continue to be processed regardless of the Limit or Straddle State. The Exchange believes this is a reasonable handling of Market Orders in the system since these orders are only pending in the system if they are exposed at the NBBO pursuant to Supplementary Material .02 to Rule 1901. If at the end of the exposure period the affected underlying is in a Limit or Straddle State, the Market Order will be cancelled with no execution occurring. If at the end of the exposure period the underlying is no longer in a Limit or Straddle State, the Market Order will be handled under the normal operation of the rules.

Lastly, MRX does not currently elect Stop Orders that are pending in the system during a Limit or Straddle State. Under the proposal, and in-line with the Phlx implementation, Stop Orders that are pending in the system during a Limit or Straddle State will be elected, if conditions for such election are met, however because they become Market Orders will be cancelled back to the Member with a reason for such rejection.

While the implementation of Market and Stop Order handling varies from MRX today, both the current and proposed Rule provide for protections from erroneous executions in a highly volatile period.[9] The Exchange believes consistency across the six options

[5] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan. As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors (Section V(A) of the Plan). When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation (Section VI(A) of the Plan). All trading centers in NMS stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS stocks. Notwithstanding this requirement, the Processor shall display an offer below the Lower Price Band or a bid above the Upper Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid or National Best Offer calculations (Section VI(A)(3) of the Plan). Trading in an NMS stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band (Section VI(B)(1) of the Plan. Trading for an NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the Plan, which would be applicable to all markets trading the security. The primary listing market would declare a Trading Pause in an NMS stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS stock could occur during the trading pause, but all bids and offers may be displayed (Section VII(A) of the Plan). In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS stock is not in a Limit State. For example, assume the Lower Price Band for an NMS Stock is $ 9.50 and the Upper Price Band is $ 10.50, such NMS stock would be in a Straddle State if the National Best Bid were below $ 9.50, and therefore unexecutable, and the National Best Offer were above $ 9.50 (including a National Best Offer that could be above $ 10.50). If an NMS stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

[6] The time periods associated with Limit States and Straddle States are not considered by the Exchange when evaluating whether a market maker complied with the continuous quotation requirements contained in Rule 804(e).

[7] *See* proposed MRX Rule 702(d)(ii) and (iii).

[8] *See* note 3 above.

[9] The Exchange is introducing a Phlx protection, Acceptable Trade Range, into MRX Rules as discussed within this rule change.

markets operated by Nasdaq, Inc. provides clarity for Members as to how their orders, as well as the opening process, will be handled in a Limit or Straddle State.

Auction Handling During a Trading Halt

The Exchange proposes to amend various rules to add detail to MRX rules to account for the impact of a trading halt on the Exchange's auction mechanisms. The Exchange proposes to memorialize within MRX Rule 723, entitled ''Price Improvement Mechanism for Crossing Transactions'' the manner in which a trading halt will impact an order entered into PIM once it is migrated to the INET architecture.

Today, if a trading halt is initiated after an order is entered into the Price Improvement Mechanism (''PIM'') on MRX, such auction is terminated and eligible interest is executed. The Exchange proposes to amend today's current behavior and instead terminate the auction and not execute eligible interest when a trading halt occurs. In the event of a trading halt, terminating the auction and not executing eligible interest will provide certainty to participants in regard to how their interest will be handled. Memorializing the manner in which the system will handle orders entered into PIM during a trading halt will provide transparency for the benefit of members and investors.

The Exchange proposes an amendment to MRX Rule 716, entitled ''Block Trades'' to memorialize that if a trading halt is initiated after an order is entered into the Block Order Mechanism, Facilitation Mechanism, or Solicited Order Mechanism, such auction will also be automatically terminated without execution. This is the current behavior today on MRX and will not be changing.

As discussed above, Phlx Rule 1047(c) provides that in the event the Exchange halts trading, all trading in the affected option shall be halted. This is interpreted to restrict executions after a halt unless there is a specific rule specifying that such trades should take place. The Exchange is proposing to add more specificity into the relevant rules. With respect to Block Order Mechanism, Facilitation Mechanism, or Solicited Order Mechanism, the Exchange notes that the current behavior is consistent with Phlx Rule 1047(c) generally, where all trading in the affected option shall be halted.[10] In the event of a trading halt, terminating these auction mechanisms and not executing eligible interest will provide certainty to participants in regard to how their interest will be handled. Memorializing the manner in which the system will handle orders during a trading halt will provide transparency for the benefit of members and investors.

Market Order Spread Protection

The Exchange proposes to amend MRX Rule 711, entitled ''Acceptance of Quotes and Orders'' to adopt a new mandatory risk protection entitled Market Order Spread Protection. MRX does not have a similar feature today. This mandatory feature is currently offered on NOM to protect Market Orders from being executed in very wide markets.[11]

Pursuant to proposed MRX Rule 711(c), if the NBBO is wider than a preset threshold at the time a Market Order is received, the order will be rejected. For example, if the Market Order Spread Protection is set to $20.00, and a Market Order to buy is received while the NBBO is $1.00–$50.00, such Market Order will be rejected. The proposed feature would assist with the maintenance of fair and orderly markets by mitigating the risks associated with errors resulting in executions at prices that are away from the Best Bid or Offer and potentially erroneous. Further the proposal protects investors from potentially receiving executions away from the prevailing prices at any given time. The Exchange proposes this feature to avoid a series of improperly priced aggressive orders transacting in the Order Book.

Today, the NOM threshold is set at $5. MRX will initially set the threshold to $5. Similar to NOM, the Exchange will notify Members of the threshold with a notice, and, thereafter, Members will be notified of any subsequent changes to the threshold. NOM set the differential at $5 to match the bid/ask differential permitted for quotes on the Exchange.[12] MRX has a similar $5 differential.[13] Thus, the presence of a quote on the Exchange will ensure the NBBO is at least $5 wide. The Exchange believes the presence of a quote on the Exchange, or a bid/ask differential of the NBBO, which is no more than $5 wide affords Market Orders proper protection against erroneous execution and in the event a bid/ask differential is more than $5, then a Market Order is rejected. The threshold is appropriate because it seeks to capture improperly priced Market Orders and reject them to reduce the risk of, and to potentially prevent, the automatic execution of Market Orders at prices that may be considered erroneous. The Exchange's proposed threshold is a reasonable measure to ensure prices remain within the reasonable limits. This protection will bolster the normal resilience and market behavior that persistently produces robust reference prices. This feature should create a level of protection that prevents Market Orders from entering the Order Book outside of an acceptable range for the Market Order to execute.

Finally, the Market Order Spread Protection will be the same for all options traded on the Exchange, and is applicable to all Members that submit Market Orders.

Acceptable Trade Range

The Exchange proposes to amend Rule 714, entitled ''Automatic Execution of Orders,'' at MRX Rule 714(b)(1) to remove the current Price Level Protection rule and adopt Phlx's Acceptable Trade Range.[14] The Exchange is proposing to adopt similar functionality which is currently utilized on Phlx in connection with the replatform of MRX. Today, MRX places a limit on the number of price levels at which an incoming order or quote to sell (buy) will be executed automatically when there are no bids (offers) from other exchanges at any price for the options series. Orders and quotes are executed at each successive price level until the maximum number of price levels is reached, and any balance is either handled by the Primary Market Maker pursuant to Rule 803(c)(1) (in the case of Priority Customer Orders) or canceled (in the case of Professional Orders). The number of price levels, may be between one (1) and ten (10). The Exchange determines the number of price levels from time-to-time on a class-by-class basis.

[10] *See* Phlx Rule 1047(c).

[11] *See* NOM Rules at Chapter VI, Section 6(c). NOM's current rule states, ''System Orders that are Market Orders will be rejected if the *best of the* NBBO and the internal market BBO (the ''Reference BBO'') is wider than a preset threshold at the time the order is received by the System.'' NOM has two order types, Price-Improving and Post-Only Orders, which result in non-displayed pricing that may cause the internal market BBO to be better than the NBBO. MRX does not have similar non-displayed order types and therefore the reference to the internal market BBO is not necessary.

[12] *See* Chapter VII, Section 6(d)(ii) of NOM Rules which describes the bid/ask differentials. Options on equities (including Exchange-Traded Fund Shares), and on index options must be quoted with a difference not to exceed $5 between the bid and offer regardless of the price of the bid, including before and during the opening. However, respecting in-the-money series where the market for the underlying security is wider than $5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market. The Exchange may establish differences other than the above for one or more series or classes of options.

[13] *See* MRX Rule 803(b)(4).

[14] *See* Phlx Rule 1080(p).

MRX proposes to replace the current Price Level Protection with Phlx's Acceptable Trade Range.[15] The proposed Acceptable Trade Range is a mechanism to prevent the system from experiencing dramatic price swings by creating a level of protection that prevents the market from moving beyond set thresholds. The thresholds consist of a reference price plus (minus) set dollar amounts based on the nature of the option and the premium of the option.

The system will calculate an Acceptable Trade Range to limit the range of prices at which an order or quote will be allowed to execute. To bolster the normal resilience and market behavior that persistently produces robust reference prices, MRX is proposing to create a level of protection that prevents the market from moving beyond set thresholds. The Acceptable Trade Range is calculated (upon receipt of a new order or quote) by taking the reference price, plus or minus a value to be determined by the Exchange (*i.e.,* the reference price − (x) for sell orders/quotes and the reference price + (x) for buy orders).[16] Upon receipt of a new order, the reference price is the National Best Bid (''NBB'') for sell orders/quotes and the National Best Offer (''NBO'') for buy orders/quotes. If an order or quote reaches the outer limit of the Acceptable Trade Range without being fully executed, then any unexecuted balance will be cancelled. The proposed Acceptable Trade Range would work as follows: Prior to executing orders received by MRX, an Acceptable Trade Range is calculated to determine the range of prices at which orders/quotes may be executed.[17] When an order is initially received, the threshold is calculated by adding (for buy orders/quotes) or subtracting (for sell orders/quotes) a value,[18] as discussed below, to the National Best Offer for buy orders/quotes or the National Best Bid for sell orders/quotes to determine the range of prices that are valid for execution. A buy (sell) order or quote will be allowed to execute up (down) to and including the maximum (minimum) price within the Acceptable Trade Range.

For example, in a thinly traded option:

AWAY EXCHANGE QUOTES

| Exchange | Bid size | Bid price | Offer price | Offer size |
|---|---|---|---|---|
| NOM | 10 | $1.00 | $1.05 | 10 |
| NYSE Arca | 10 | 1.00 | 1.05 | 10 |
| NYSE MKT | 10 | 1.00 | 1.10 | 10 |
| BOX | 10 | 1.00 | 1.15 | 10 |

MRX PRICE LEVELS

| Exchange | Bid size | Bid price | Offer price | Offer size |
|---|---|---|---|---|
| MRX orders | 10 | $1.00 | $1.05 | 10 |
| MRX orders | | | 1.10 | 10 |
| MRX orders | | | 1.40 | 10 |
| MRX orders | | | 5.00 | 10 |

If MRX receives a routable market order to buy 80 contracts, the system will respond as described below:

—10 contracts will be executed at $1.05 against MRX
—10 contracts will be executed at $1.05 against NOM
—10 contracts will be executed at $1.05 against NYSE Arca.
—10 contracts will be executed at $1.10 against MRX
—10 contracts will be executed at $1.10 against NYSE MKT
—10 contracts will be executed at $1.15 against BOX

After these executions, there are no other known valid away exchange quotes. The National Best Bid/Offer (''NBBO'') is therefore comprised of the remaining interest on the MRX book, specifically 10 contracts at $1.40 and 10 contracts at $5.00. In the absence of an Acceptable Trade Range mechanism, the order would execute against the remaining interest at $1.40 and $5.00, resulting in potential harm to investors.

MRX will set the parameters of the mechanism at levels that will ensure that it is triggered quite infrequently. Importantly, the Acceptable Trade Range is neutral with respect to away markets, an order may route to other destinations to access liquidity priced within the Acceptable Trade Range provided the order is designated as routable.

The options premium will be the dominant factor in determining the Acceptable Trade Range. Generally, options with lower premiums tend to be more liquid and have tighter bid/ask spreads; options with higher premiums have wider spreads and less liquidity. Accordingly, a table consisting of several steps based on the premium of the option will be used to determine how far the market for a given option will be allowed to move. This table or tables would be listed on the Exchange Web site and any periodic updates to the table would be announced via an Options Trader Alert.

For example, looking at some SPY May 2013 Call options on May 1st of 2013:

Bid/Offer of SPY May 160 Call (at or near-the-money): $1.23 × $1.24 (several hundred contracts on bid and offer)

Bid/Offer of SPY May 105 Call (deep in-the-money): $54.10 × $54.26 (11 contracts on each side)

The deep in-the-money calls (May 105 calls) have a wider spread ($54.10 − $54.26 = $0.16) compared to a spread of $0.01 for the at-the-money calls (May

[15] The Exchange notes that the version of Acceptable Trade Range to be implemented on MRX will not include the posting period functionality available today on Phlx. The proposed rules reflect this change.

[16] The Acceptable Trade Range settings are tied to the option premium.

[17] The Acceptable Trade Range will not be available for All-Or-None orders. Today, MRX's Price Level Protection rule is not available for All-Or-None orders. The Exchange has determined that it would be difficult, from a technical standpoint, to apply this feature to those orders because their particular contingency makes it difficult to automate their handling.

[18] The value that is to be added to/subtracted from the reference price will be set by MRX and posted on its Web site.

160 calls). Therefore, it is appropriate to have different thresholds for the two options. For instance, it may make sense to have a $0.05 threshold for the at-the-money strikes (Premium < $2) and a $0.50 threshold for the deep in-the-money strikes (Premium > $10).

To consider another example, the May 2013 ORCL put options on May 1st of 2013:

Bid/Offer of ORCL 33 May Put (at or near-the-money): $0.33 × $0.34 (100 × 500)

Bid/Offer of ORCL 44 May Put (deep in-the-money): $10.40 × $10.55 (50 × 200)

Even though ORCL has a much lower share price than SPY, and is a different type of security (it is a common stock of a technology company whereas SPY is an ETF based on the S&P 500 Index), the pattern is the same. The option with the lower premium has a very narrow spread of $0.01 with significant size displayed whereas the higher premium option has a wide spread ($0.15) and less size displayed.

The Acceptable Trade Range settings will be tied to the option premium. However, other factors will be considered when determining the exact settings. For example, acceptable ranges may change if market-wide volatility is as high as it was during the financial crisis in 2008 and 2009, or if overall liquidity is low based on historical trends. These different market conditions may present the need to adjust the threshold amounts from time to time to ensure a well-functioning market. Without adjustments, the market may become too constrained or conversely, prone to wide price swings. As stated above, the Exchange would publish the Acceptable Trade Range table or tables on the Exchange Web site. The Exchange does not foresee updating the table(s) often or intraday, although the exchange may determine to do so in extreme circumstances. The Exchange will provide sufficient advanced notice of changes to the Acceptable Trade Range table, generally the prior day, to its membership via an Exchange alert.

The Acceptable Trade Range settings would generally be the same across all options traded on MRX, although MRX proposes to maintain flexibility to set them separately based on characteristics of the underlying security. For instance, Google is a stock with a high share price ($824.57 closing price on April 30, 2013). Google options therefore may require special settings due to the risk involved in actively quoting options on such a high-priced stock. Option spreads on Google are wider and the size available at the best bid and offer is smaller. Google could potentially need a wider threshold setting compared to other lower-priced stocks. There are other options that fit into this category (*e.g.* AAPL) which makes it necessary to have threshold settings that have flexibility based on the underlying security. Additionally, it is generally observed that options subject to the Penny Pilot program quote with tighter spreads than options not subject to the Penny Pilot. MRX will set Acceptable Trade Ranges for three categories of options: (1) Penny Pilot Options trading in one cent increments for options trading at less than $3.00 and increments of five cents for options trading at $3.00 or more, (2) Penny Pilot Options trading in one-cent increments for all prices, and (3) Non-Penny Pilot Options.

The Phlx rule contains language that references a posting period.[19] Specifically, the Phlx Rule provides if an order/quote reaches the outer limit of the Acceptable Trade Range (the ''Threshold Price'') without being fully executed, it will be posted at the Threshold Price for a brief period, not to exceed one second (''Posting Period''), to allow more liquidity to be collected, unless a Quote Exhaust has occurred, in which case the Quote Exhaust process in Phlx Rule 1082(a)(ii)(B)(3) will ensue, triggering a new Reference Price.[20] The Exchange will not post interest that exceeds the outer limit of the Acceptable Trade Range, rather the interest will be cancelled. Only if the order limit does not exceed the Acceptable Trade Range will it post on the Exchange, if not otherwise executed. Further, the Phlx rule provides for the re-pricing of that order or quote and calculation of a new Acceptable Trade Range. Consistent with the current treatment of orders and quotes under MRX rules, the Exchange is not adopting the posting period. Unlike Phlx, MRX does not offer a general continuous re-pricing mechanism, and does not consider iterations in its current functionality.[21] MRX would cancel rather than reprice orders which exceed the outer limit of the Acceptable Trade Range. Orders which do not exceed the outer limit of the Acceptable Trade Range will post to the order book and will reside on the order book at such price until they are either executed in full or cancelled by the Member. Additionally, resting orders do not re-price on the order book as they do today on Phlx. For these reasons, the unexecuted balance which exceeds the outer limit of the Acceptable Trade Range will be cancelled, rather than posted to the order book.

PMM Order Handling and Opening Obligations

Today, PMMs are responsible for handling Priority Customer orders that are not automatically executed pursuant to MRX Rule 714(b)(1), *i.e.,* the Price Level Protection, and to initiate the opening rotation in each series pursuant to MRX Rule 701. This responsibility is described in each of those rules, as well as in MRX Rule 803(c), which provides that:

> In addition to the obligations contained in this Rule for market makers generally, for options classes to which a market maker is the appointed Primary Market Maker, it shall have the responsibility to: (1) As soon as practical, address Priority Customer Orders that are not automatically executed pursuant to Rule 714(b)(1) in a manner consistent with its obligations under paragraph (b) of this Rule by either (i) executing all or a portion of the order at a price that at least matches the NBBO and that improves upon the Exchange's best bid (in the case of a sell order) or the Exchange's best offer (in the case of a buy order); or (ii) releasing all or a portion of the order for execution against bids and offers on the Exchange. (2) Initiate trading in each series pursuant to Rule 701.

As described in more detail in the sections above, with the re-platform to Nasdaq technology, the Exchange is adopting Acceptable Trade Range and opening rotation functionality currently offered on NOM and Phlx, which do not contain similar requirements for the PMM. The Exchange therefore proposes to eliminate the PMM order handling and opening obligations in Rule 803(c).

The Exchange believes that the elimination of the PMM obligation to initiate the opening rotation in this rule is appropriate because the proposed

[19] *See* Phlx Rule 1080(p)(1)(B).

[20] The Quote Exhaust process occurs when Phlx's disseminated market at a particular price level includes a quote, and such market is exhausted by an inbound contra-side quote or order, and following such exhaustion, contracts remain to be executed from such quote or order through the initial execution price.

[21] With respect to trade-throughs and locked and crossed markets, a Phlx order will not be executed at a price that trades through another market or is displayed at a price that would lock or cross another market. If, at the time of entry, an order that the entering party has elected not to make eligible for routing would cause a locked or crossed market violation or would cause a trade-through violation, it will be re-priced to the current national best offer (for bids) or the current national best bid (for offers) and displayed at one minimum price variance above (for offers) or below (for bids) the national best price. *See* Phlx Rule 1080(m)(iv)(A). In the instance that the system automatically reprices an order or quote, the system would assign the orders or quote a new timestamp and the order or quote will be reprioritized within the Order Book in accordance with the priority rules in Phlx Rule 1014(g).

opening process [22] is initiated by the receipt of an appropriate number of valid width Primary Market Maker or Competitive Market Maker quotes as outlined in proposed MRX Rule 701(c)(i) [sic]. Similarly, the Acceptable Trade Range functionality will continue to provide an important protection to members without imposing any Primary Market Maker obligations. Today, Phlx does not have similar roles for a Specialist on its market. In connection with the replatform, the Exchange will conform its rules with those of Phlx with respect to the manner in which it operates the Opening Process.

Back-Up PMM

The Exchange also proposes to amend MRX Supplementary Material .03 to Rule 803 to eliminate its Back-Up Primary Market Maker program. Today, any MRX Member that is approved to act in the capacity of a Primary Market Maker may voluntarily act as a ''Back-Up Primary Market Maker'' in options series in which it is quoting as a Competitive Market Maker. A Back-Up Primary Market Maker assumes all of the responsibilities and privileges of a Primary Market Maker under the Exchange's rules with respect to any series in which the appointed Primary Market Maker fails to have a quote in the system except that a Back-Up Primary Market Maker's quoting obligations are the same as the quoting obligations for Competitive Market Makers as described in MRX Rule 804(e)(2)(iii) and .02 of Supplementary Material to Rule 804.[23] If more than one Competitive Market Maker that has volunteered to be a Back-Up Primary Market Maker is quoting in an options series at the time that a Primary Market Maker ceases quoting, the Competitive Market Maker with the largest offer at the lowest price in the series at that time will be chosen to be the Back-Up Primary Market Maker. In the event of a tie based on price and size, the Competitive Market Maker with time priority will be automatically chosen. The Back-Up Primary Market Maker is automatically restored to Competitive Market Maker status when the appointed Primary Market Maker initiates quoting in the series. The obligations of a Primary Market Maker include the initiation of a trading rotation pursuant to MRX Rule 701, quoting and other obligations pursuant to MRX Rules 803 and 804, and financial requirements pursuant to MRX Rule 809. The Exchange is proposing to amend the obligations of a PMM only with regard to the initiation of a trading rotation pursuant to MRX Rule 701. The quoting and financial requirements rules shall remain the same.

With the re-platform, a Back-Up Primary Market Maker is no longer necessary since the order handling obligations present on MRX today are not going to be present in the new system. Furthermore, the proposed Opening Process,[24] obviates the importance of such a role. The Opening Process describes the entry of quotes by both a Primary Market Maker and a Competitive Market Maker, provided they are Valid Width Quotes.[25] The Opening Process further describes alternative methods to open the market if such quotes are not entered at the opening by either of these market makers.[26] The reliance on a market maker to initiate the opening process is no longer present within the proposed rule.[27]

Market Maker Speed Bump

The Exchange proposes to amend MRX Rule 804, entitled ''Market Maker Quotations'' to establish default parameters for certain risk functionality. The Exchange offers a risk protection mechanism for market maker quotes that removes a member's quotes in an options class if a specified number of curtailment events occur during a set time period (''Market Maker Speed Bump''). In addition, the Exchange offers a market-wide risk protection that removes a market maker's quotes across all classes if a number of curtailment events occur (''Market-Wide Speed Bump''). MRX Rule 804(g) currently requires that market makers set curtailment parameters for both the Market Maker Speed Bump and the Market-Wide Speed Bump. Today, if a market maker does not set these parameters their quotes are rejected by the trading system for each of the speed bumps mentioned herein.

With the re-platform, the Exchange has determined to provide default curtailment parameters to assist market makers when they do not enter their own parameters into the system. The default parameters will be determined by the Exchange and announced to members. Rather than rejecting quotes, the default parameters would be instituted. The default parameters are important because market makers at MRX have quoting obligations as specified in MRX Rule 804. When a market maker's quotes are removed from the system, the time does not count toward the continuous quoting obligations. The Exchange believes that allowing for default settings would cause quotes not to be rejected and would assist market makers in meeting their quoting obligations because they would not have their quotes removed from the market. Today, Phlx indicates default parameters for its detection of loss of communication settings.[28]

Anti-Internalization

The Exchange proposes to amend the MRX Supplementary Material at .03 to Rule 804, entitled ''Market Maker Quotations'' to adopt an Anti-Internalization rule. Today, MRX's functionality prevents Immediate-or-Cancel (''IOC'') [29] orders entered by a market maker from trading with the market maker's own quote.[30] As implemented, if an IOC order entered by a market maker would trade with a quote entered by the same market maker, that order will instead be allocated to other interest at the same price, and the balance cancelled. The Exchange proposes to replace this self-trade protection functionality with Anti-Internalization functionality currently offered on Phlx.[31]

Today, Phlx provides anti-internalization (''AIQ'') functionality to Specialists and Registered Options Traders (''collectively market makers''). Quotes and orders entered by Phlx market makers using the same badge [32] are not executed against quotes and orders entered on the opposite side of the market using the same badge. This automatically prevents these quotes and orders from interacting with each other in the system. On Phlx, the system cancels the resting quote or order back to the entering party prior to execution. This functionality does not apply in any

[22] *See* note 3 above.

[23] The Exchange notes that the current rule text for Back-up Primary Market Maker on MRX does not indicate that quoting obligations for Back-up Primary Market Makers are the same as for Competitive Market Makers. This, however, has been the Exchanges practice, and the practice of its affiliated exchanges, including, the Nasdaq ISE, LLC. *See* Securities Exchange Act Release No. 76936 (January 20, 2016), 81 FR 4347 (January 26, 2016) (SR–ISE–2016–02).

[24] *See* note 3 above.

[25] A Valid Width Quote is a two-sided electronic quotation submitted by a Market Maker that consists of a bid/ask differential that is compliant with MRX proposed Rule 803(b)(4). *See* note 3 above.

[26] *See* note 3 above.

[27] *Id.*

[28] Phlx Rule 1019(c).

[29] An IOC order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled. *See* Rule 715(b)(3).

[30] This functionality is not memorialized in MRX's rules.

[31] Phlx Rule 1080(p)(2).

[32] A badge is the same as a market participant identifier (''MPID'').

auction or with respect to complex transactions.

The Exchange proposes to adopt a similar rule that provides that quotes and orders entered by Market Makers using the same member identifier will not be executed against quotes and orders entered on the opposite side of the market by the same market maker using the same member identifier. In such a case, the system will cancel the resting quote or order back to the entering party prior to execution. This functionality shall not apply in any auction. AIQ is difficult to apply during auctions, and there is limited benefit in doing so. There is limited benefit because, generally speaking, auctions do not raise the same policy concerns for wash sales and ERISA [33] due to the semi-random manner in which trades are matched.

This functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. Market Makers generally do not display public customer orders in market making quotations, opting instead to enter public customer orders using separate identifiers. In the event that a Market Maker opts to include a public customer order within a market making quotation, the Market Maker must take appropriate steps to ensure that public customer orders that do not execute due to anti-internalization functionality ultimately receive the same execution price (or better) they would have originally obtained if execution of the order was not inhibited by the functionality.

This Anti-Internalization functionality can assist Market Makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

Minimum Execution Quantity Orders

The Exchange proposes to amend MRX Rule 715, entitled ''Types of Orders'' at 715(q) to remove minimum quantity orders. Today, the Exchange allows members to enter minimum quantity orders, which is an order type that is available for partial execution, but each partial execution must be for a specified number of contracts or greater. If the balance of the order after one or more partial executions is less than the minimum, such balance is treated as All-Or-None. Like All-Or-None orders, minimum quantity orders are contingency orders that are not displayed in the Exchange's best bid or offer. However, the Exchange disseminates to market participants an indication that a minimum quantity order has been entered. The Exchange has found that its members have not adopted this feature and therefore proposes to remove this functionality.[34] Furthermore, the Exchange proposes to remove two references to minimum quantity orders in other rules. Specifically, the Exchange proposes to remove references to minimum quantity orders in MRX Supplementary Material .02 to Rule 713, which notes that minimum quantity orders are contingency orders that have no priority on the book, and in MRX Supplementary Material .04 to Rule 717, which explains that non-marketable minimum quantity orders are deemed ''exposed'' one second following a broadcast notifying the market that such an order to buy or sell a specified number of contracts at a specified with a specified minimum quantity has been received in the options series.

Cancel and Replace Orders

The Exchange is proposing to amend Supplementary Material .02 to MRX Rule 715 to memorialize the manner in which the system will handle cancel and replace orders in connection with the Exchange's technology migration to INET.

By way of background with respect to cancel and replace orders, a Member has the option of either sending in a cancel order and then separately sending in a new order which serves as a replacement of the original order (two separate messages) or sending a single cancel and replace order in one message (''Cancel and Replace Order''). Sending in a cancel order and then separately sending in a new order will not retain the priority of the original order on the current MRX system and on the INET system.

Today, MRX does not treat all Cancel and Replace Orders as new orders. For example, a Cancel and Replace Order which reduced the size of the original order from 600 to 300 contracts would not be treated as a new order. A new order would be subject to price or other reasonability checks,[35] which this order today on MRX would not be subject to as a result of decreasing the size of the order. This order would continue to retain its time priority in the system. If a Cancel and Replace Order does not pass a price or other reasonability check, the order will cancel, but it will not be replaced with a new order.

The Exchange proposes to define a Cancel and Replace Order as a single message for the immediate cancellation of a previously received order and the replacement of that order with a new order. If the previously placed order is already partially filled or in its entirety,[36] the replacement order is automatically canceled or reduced by the number of contracts that were executed. Additionally, the replacement order will retain the priority of the cancelled order, if the order posts to the Order Book,[37] provided the price is not amended, size is not increased,[38] or in the case of Reserve Orders, size is not changed.[39] However, if the replacement portion of a Cancel and Replace Order does not satisfy the system's price or other reasonability checks the existing order will be cancelled and not replaced.[40]

The Exchange represents that conducting price or other reasonability checks for all Cancel and Replace Orders will validate orders against current market conditions prior to proceeding with the request to modify the order. The Exchange further believes that memorializing Cancel and Replace Order handling will add transparency to the Exchange's rules and reduce the potential for investor confusion. Other exchanges with a similar order type permit an order to retain priority if only

[33] AIQ also is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act (''ERISA'') that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist Market Makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

[34] This functionality is not currently being utilized by any member on MRX.

[35] Price or other reasonability checks consider the current market at the time of the Cancel and Replace Order.

[36] For example, in both the current MRX system and INET, the original order is automatically canceled or reduced by the number of contracts that were executed depending on the volume of the original order that was filled.

[37] During an exposure period a Cancel and Replace Order will retain priority if the order posts to the Order Book, provided price is not changed, size is not increased or, for a Reserve Order, size is not changed.

[38] Decrementing the volume will not result in a change in priority, as is the case today with MRX.

[39] A Reserve Order is a limit order that contains both a displayed portion and a non-displayed portion. *See* MRX Rule 715(g).

[40] The Exchange notes that if the replacement portion of a Cancel and Replace order does not satisfy the system's price or other reasonability checks, the existing order shall be cancelled and not replaced. The price reasonability checks include: (i) MRX Rule 710; (ii) MRX Rule 711(c); and (iii) MRX Rule 714(b)(2). The Exchange notes that other than these price reasonability checks, the Exchange may cancel an order because it does not satisfy a format or other requirement specified in the Exchange's s rules and specifications.

the size of the order is decremented.[41] Accordingly, the Commission believes it is appropriate for the Exchange to define Cancel and Replace Order in the manner proposed.

All-Or-None Orders

The Exchange proposes to amend Rule 715(c) to provide that an All-Or-None Order may only be entered into the system with a time-in-force designation of Immediate-Or-Cancel order in connection with the Exchange's technology migration to INET.

An All-Or-None Order is a limit or market order that is to be executed in its entirety or not at all. Today, an All-Or-None Order may be designated as a market or limit order with any time-in-force designation. The Exchange proposes to limit All-Or-None Orders to only be accepted with a time-in-force designation of Immediate-Or-Cancel. An Immediate-Or-Cancel Order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed is to be treated as cancelled.

The Exchange also proposes to amend Supplementary Material .02 to Rule 713 to make clear that All-Or-None Orders will only be accepted with a time-in-force designation of Immediate-Or-Cancel and, therefore, would not persist in the Order Book. The Exchange also proposes to amend Supplementary Material .04 to Rule 717 to reserve this section as All-Or-None Orders [42] would not be subject to exposure because they would be cancelled if not executed in their entirety.[43]

Delay of Implementation

The Exchange proposes to delay the implementation of Directed Order [44] functionality on MRX. The Exchange proposes to continue to offer this functionality on the current platform. The Exchange however would propose not to launch the Directed Order functionality on MRX at the same time as proposed herein for the proposals to amend other trading functions. The Exchange would instead issue an alert which specifies a different date for this functionality to commence on MRX. This functionality will remain the same on the new platform.

The Exchange proposes to amend the rule text in Rule 811 (Directed Orders) to note that this functionality will not be available as of a certain date in the third quarter of 2017 to be announced in a notice. The Exchange will recommence this functionality on MRX within one year from the date of filing of this rule change to be announced in a separate notice.

The Exchange intends to begin implementation of the functionality for Directed Orders after Q3 2017. The migration will also be on a symbol by symbol basis, and the Exchange will issue an alert to members in the form of an Options Trader Alert to provide notification of the symbols that will migrate and the relevant dates. The Exchange will introduce Directed Orders on MRX within one year from the date of this filing, otherwise the Exchange will file a rule proposal with the Commission to remove these rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[45] in general, and furthers the objectives of Section 6(b)(5) of the Act,[46] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest for the reasons stated below.

Trading Halts

The Exchange's proposal to amend MRX Rule 702 concerning Trading Halts to specifically note that during a halt the Exchange will maintain existing orders on the book but not existing quotes is consistent with the Act because it provides market participants with clarity as to the manner in which interest will be handled by the system. During a trading halt, the market may move and create risk to market participants with respect to resting interest. The Exchange believes that cancelling existing quotes protects investors and the public interest by removing potentially stale quotes during the halt process.

The Exchange's proposal to amend its rules on order handling during Limit up-Limit Down states and trading halts is consistent with the Act because it will harmonize the way the Exchange treats orders during a Limit State or Straddle State in the equity market, or a trading halt in the option, with how those orders are handled on other Nasdaq Exchanges. The proposed rule text should provide certainty about how options orders and trades will be handled during periods of extraordinary volatility in the underlying security. Specifically, under the proposal, market participants will be able to continue to trade options overlying securities that are in a Limit State or Straddle State, while addressing specific order types that are subject to added risks during such periods. The Exchange believes that the rejection of options Market Orders (including elected Stop Orders) should help to prevent executions that might occur at prices that have not been reliably formed, which should, in turn, protect, in particular, retail investors from executions of un-priced orders during times of significant volatility. The Exchange believes that harmonizing these rules will provide a better experience to members that trade on multiple markets operated by Nasdaq, Inc.

Cancellation of Quotes

The Exchange's proposal to amend MRX Rule 702 concerning Trading Halts to specifically note that during a halt the Exchange will maintain existing orders on the book but not existing quotes is consistent with the Act because it provides market participants with clarity as to the manner in which interest will be handled by the system. During a trading halt, the market may move and create risk to market participants with respect to resting interest. The Exchange believes that cancelling existing quotes protects investors and the public interest by removing potentially stale quotes during the halt process.

Limit Up-Limit Down

The Exchange's proposal to add new MRX Rule 702(d) to replace rule text currently contained in MRX Rule 703A entitled ''Trading During Limit Up-Limit Down States in Underlying Securities'' is consistent with the Act because the proposed rules provide for protections from erroneous executions in a highly volatile period. The proposed rule text in MRX Rule 702(d) is similar to language currently in Phlx Rule 1047(d), which provides for Exchange handling due to extraordinary market volatility. As noted within this proposal, the Exchange will adopt opening limitation, Market Order and

[41] *See* Phlx Rule 1080(b)(i)(A).

[42] This section is also being reserved because the Exchange is eliminating Minimum Quantity Orders.

[43] The Exchange notes that Rule 716(e), Solicited Order Mechanism, is not being amended. The proposed rule change does not impact the manner in which the Solicited Order Mechanism operates.

[44] MRX currently operates a Directed Order system in which Electronic Access Members (''EAMs'') can send an order to a DMM for possible price improvement. If a DMM accepts Directed Orders generally, that DMM must accept all Directed Orders from all EAMs. Once such a DMM receives a Directed Order, it either (i) must enter the order into the Exchange's PIM auction and guarantee its execution at a price better than the MRX best bid or offer (''MRX BBO'') by at least a penny and equal to or better than the NBBO or (ii) must release the order into the Exchange's limit order book, in which case there are certain restrictions on the DMM interacting with the order. *See* MRX Rule 811.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

Stop Order handling consistent with handling today on Phlx. The Exchange proposes to adopt rule text to provide for how the Exchange shall treat the opening rotation.[47] If an opening process is occurring, it will cease and then start the opening process from the beginning once the Limit State or Straddle State is no longer occurring. The Exchange believes that this treatment at the opening will protect investors and the public interest by halting trading to prevent unintended executions. Also, with this proposal, Market Orders pending in the system will continue to be processed regardless of the Limit or Straddle State. The Exchange believes that this treatment of Market Orders is consistent with the Act because these Market Orders are only pending in the system if they are exposed at the NBBO pursuant to Supplementary Material .02 to Rule 1901. If at the end of the exposure period the affected underlying is in a Limit or Straddle State, the Market Order will be cancelled with no trade occurring. If at the end of the exposure period, the affected underlying is no longer in a Limit or Straddle State, the Market Order will be handled pursuant to the normal operation of the rules.

Lastly, MRX does not currently elect Stop Orders that are pending in the system during a Limit or Straddle State. Under the proposal, and in-line with the Phlx implementation, Stop Orders that are pending in the system during a Limit or Straddle State will be elected, if conditions for such election are met, and, because they become Market Orders, will be cancelled back to the Member with a reason for such rejection. The Exchange believes that this is consistent with the Act because it affords the appropriate protections to an elected Stop Order once it becomes a Market Order after election. The Exchange believes that this approach provides the market participant with the intended result.

Auction Handling During a Trading Halt

The Exchange's proposal to amend various rules to add detail to MRX rules to account for the impact of a trading halt on the Exchange's auction mechanisms is consistent with the Act for the reasons which follow. The Exchange's proposal to amend today's current behavior and instead terminate the PIM auction and not execute eligible interest when a trading halt occurs is consistent with the Act because during a trading halt, the market may move and create risk to market participants with respect to resting interest. The Exchange believes that terminating the PIM auction protects investors and the public interest by providing certainty to participants in regard to how their interest will be handled. Memorializing the manner in which the system will handle orders entered into PIM during a trading halt will provide transparency for the benefit of members and investors.

The Exchange's proposal to amend MRX Rule 716, entitled ''Block Trades'' to memorialize that if a trading halt is initiated after an order is entered into the Block Order Mechanism, Facilitation Mechanism, or Solicited Order Mechanism, such auction will also be automatically terminated without execution is consistent with the Act because in the event of a trading halt, terminating these auction mechanisms and not executing eligible interest will provide certainty to participants in regard to how their interest will be handled. Memorializing the manner in which the system will handle orders during a trading halt will provide transparency for the benefit of members and investors.

Market Order Spread Protection

The Exchange's proposal to amend MRX Rule 711 to adopt a mandatory risk protection entitled Market Order Spread Protection is consistent with the Act because it provides a protection for Market Orders that may encourage price continuity, which should, in turn, protect investors and the public interest by reducing executions occurring at dislocated prices. Further, the Exchange believes that this rule proposal will mitigate risks to market participants.

Acceptable Trade Range

The Exchange's proposal to amend MRX Rule 714 to remove the current Price Level Protection rule and adopt Phlx's Acceptable Trade Range is consistent with the Act and will remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by making the Exchange's market more efficient, to the benefit of the investing public. Further, it should prevent the system from experiencing dramatic price swings by creating a level of protection that prevents the market from moving beyond set thresholds. The proposed rule change will reduce the negative impacts of sudden, unanticipated volatility in individual options, and serve to preserve an orderly market in a transparent and uniform manner, enhance the price-discovery process, increase overall market confidence, and promote fair and orderly markets and the protection of investors. Specifically, the Exchange believes that the NBBO is a fair representation of then-available prices and accordingly the proposal helps to avoid executions at prices that are significantly worse than the NBBO.

With respect to the posting information, which is described in the Phlx rule, but not contained in the proposed MRX rule, the Exchange believes that it is consistent with the Act to cancel unexecuted interest which is priced through an Acceptable Trade Range. Today, the Exchange does not have an iterative process wherein the Exchange will attempt to execute unexecuted balances for a period of time while that interest is automatically re-priced on the order book. Phlx has this type of functionality for Acceptable Trade Range, while the Exchange does not re-price interest on the order book. The Exchange transparently describes the cancellation of the interest within its rules.

PMM Order Handling and Opening Obligations

The Exchange's proposal to eliminate the PMMs order handling and opening obligations is consistent with the Act because PMMs will no longer have these obligations due to the introduction of Acceptable Trade Range and opening rotation functionality that is offered today on NOM and Phlx. Because the PMM will no longer have these obligations, the Exchange believes that it is appropriate to remove these rules.

Back-Up PMM

The Exchange's proposal to remove certain responsibilities of Primary Market Makers with respect to Back-Up Primary Market Maker assignments is consistent with the Act because the Exchange believes this function is not necessary. Today, in addition to market making obligations, the Primary Market Maker has certain order handling and other obligations as prescribed by Exchange Rules. Specifically, the obligations of a Primary Market Maker include the initiation of a trading rotation pursuant to MRX Rule 701, quoting and other obligations pursuant to MRX Rules 803 and 804, and financial requirements pursuant to MRX Rule 809. The Exchange is proposing to amend the obligations of a PMM only with regard to the initiation of a trading rotation pursuant to MRX Rule 701. The quoting and financial requirements rules shall remain the same. With the re-platform, a Back-Up Primary Market Maker is no longer necessary since the order handling obligations present on MRX today are not going to be present

[47] *See* note 3 above.

in the new system. Furthermore, the proposed Opening Process,[48] obviates the importance of such a role. The Opening Process further describes alternative methods to open the market if such quotes are not entered at the opening by either of these market makers.[49] The reliance on a market maker to initiate the opening process is no longer present within the proposed rule.[50]

In addition, the Exchange does not believe there is an interest among market participants for the back-up assignment.

Default Settings for Market Maker Risk Protections

The Exchange's proposal to amend MRX Rule 804(g) to introduce default curtailment settings for the Market Maker Speed Bump and Market-Wide Speed Bump is consistent with the Act as it will allow market makers to use Exchange set default values for these risk protections. Today, these market makers would have their quotes rejected if they fail to enter the required curtailment parameters. The default settings provide an alternative for market makers that have not entered their curtailment settings. Default settings will be announced to members who will have the opportunity to avoid the defaults by entering their own curtailment settings as required under the rule.

Anti-Internalization

The Exchange's proposal to amend the MRX Supplementary Material at .03 to Rule 804 to add Anti-Internalization is consistent with the Act because it is designed to assist market makers in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm when performing the same market making function.

Further, it is consistent with the Act to not apply this functionality in any auction because AIQ is difficult to apply during auctions, and there is limited benefit in doing so. There is limited benefit because, generally speaking, auctions do not raise the same policy concerns for wash sales and ERISA [51] due to the semi-random manner in which trades are matched.

Minimum Quantity Orders

The Exchange believes that removing minimum quantity orders would remove impediments to and perfect the mechanism of a free and open market and a national market system by simplifying functionality available on the Exchange and reducing complexity of its order types.

Delay of Implementation

The Exchange believes that delaying the implementation of the Directed Order functionality on MRX is consistent with the Act because the Exchange desires to rollout this functionality at a later date to allow additional time to rebuild this technology on the new platform. The Exchange is staging the replatform to provide maximum benefit to its Members while also ensuring a successful rollout. This delay will provide the Exchange additional time to implement this functionality, which is not being amended. Members have been given adequate notice of the implementation dates. The Exchange will continue to provide notifications to Members to ensure clarity about the delay of implementation of this functionality. The Exchange will note the applicable dates within the rule text.

Cancel and Replace Orders

With respect to Cancel and Replace Orders, the Exchange believes that it is consistent with the Act to treat such orders as new orders which will be subject to price or other reasonability checks. The Exchange believes that conducting price or other reasonability checks for all Cancel and Replace Orders will protect investors and the public interest by validating the order against the current market conditions prior to proceeding with the request to modify the order. The manner in which MRX treats priority with respect to Cancel and Replace Orders is not changing. The MRX system currently assigns a new priority to the order when the price is changed, size is increased or the size of a reserve order is changed. Hence, the priority of the original order would continue to not be retained in the same manner with respect to the original order. The Exchange believes that allowing Cancel and Replace Orders, where the size is reduced, to retain the priority of the original order is consistent with the manner in which the Exchange treats partially executed orders, which similarly apply the priority of the executed portion of the order to the remaining portion of the order. Other exchanges today permit an order to retain priority if only the size was decremented.[52] The Exchange believes that permitting size to decrement and allowing the order to retain priority is consistent with the Act because the reduced change in size does not impact the terms of the order materially. The reduced size of the order would have priority on the Order Book with the original order.

The Exchange believes that it is consistent with the Act to treat Reserve Orders differently than other order types by giving these orders a new priority if size is amended in any way, including a decrement in size, with a Cancel and Replace Order because unlike other order types, Reserve Orders have both a displayed an [sic] non-displayed portion. The Exchange believes that any change to the original order of a Reserve Order should be treated as a new order because the size of a Reserve Order is specifically defined as part of that order type. A Member must specify the displayed and total volume, a portion of which is non-displayed, when a Reserve Order is entered into the system. Treating this order type as a new order if size is amended is consistent with the Act because the terms of the original order of a Reserve Order would modify the total size of the order, including potentially displayed and non-displayed portions which the Exchange believes should result in a new order as it changes a material portion of the order.

The Exchange believes that memorializing the Cancel and Replace Order handling will add transparency and specificity to the Rules thereby protecting investors and the public interest by reducing the potential for investor confusion.

All-Or-None Orders

The Exchange believes that the proposal with respect to All-Or-None Orders is appropriate and reasonable, because the time-in-force designation of Immediate-Or-Cancel will offer Members certainty with respect to their order handling. With this proposal, an All-Or-None Order will either execute immediately or be cancelled back to the Member. All-Or-None Orders are contingency orders that have no priority on the Order Book. These orders would receive an execution after all other trading interest at the same price has been exhausted. This proposal would remove uncertainty with respect to the manner in which these orders would be handled in the Order Book by cancelling back an All-Or-None Order if it cannot be immediately executed in its entirety. Today, the NASDAQ Options Market, LLC (''NOM'') only permits All-Or-None Orders to be submitted with a time-in-

[48] *See* note 3 above.

[49] *Id.*

[50] *Id.*

[51] *See* note 34 above.

[52] *See* NASDAQ PHLX, LLC Rule 1080(b)(i)(A).

force designation of Immediate-Or-Cancel.[53]

The Exchange notes that Members are aware of the Exchange's efforts to replatform to the INET technology. Members have been involved in testing the system and providing feedback to the Exchange throughout this migration process. Members were provided notice of this proposed change to the system. The Exchange intends to make clear the implementation of this functionality within its Rulebook.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the Exchange is re-platforming it's trading system onto the Nasdaq INET architecture, and is making certain other changes to its trading functionality in connection with this migration. A majority of the functionality that is being added with the proposed rule change already exists on one or more Nasdaq Exchanges. As a result, the Exchange does not believe that the proposed rule change will impact the intense competition that exists in the options market. In fact, the Exchange believes that adopting this functionality on MRX will allow the Exchange to more effectively compete for order flow with other options markets.

The Exchange does not believe conducting price or other reasonability checks for all Cancel and Replace Orders imposes an undue burden on competition because all Cancel and Replace Orders will uniformly be subject to this additional protection based on the current market conditions. Permitting all market participants to reduce their exposure without penalty does not impose an undue burden [sic] competition, rather it promotes competition by allowing participants the ability to change their orders in a changing market, provided the order was not already filled. The Exchange believes that not permitting Reserve Orders to retain priority if size is amended does not create an undue burden on competition because all Members will be treated in a uniform manner with respect to Cancel and Replace Order handling.

The Exchange does not believe that the proposed rule change to All-or-None Orders will impact the intense competition that exists in the options market because the All-Or-None Order type, as proposed, will continue to offer Members a competitive alternative on MRX for submitting orders for execution.

Delaying the implementation of the Directed Order functionality will allow additional time to rebuild this technology on the new platform and provide maximum benefit to Members for a successful rollout. No Member will be able to utilize the Directed Order functionality with the delay. Members have been given adequate notice of the implementation dates.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2017–02 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–MRX–2017–02.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–MRX–2017–02* and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11509 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[53] *See* NOM Rules, Chapter VI, Section 1(g)(2).

[54] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80809; File No. SR–BatsBYX–2017–11]**

## Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use on Bats BYX Exchange, Inc.

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2017, Bats BYX Exchange, Inc. (the ''Exchange'' or ''Bats'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange filed a proposal to establish the fees for Industry Members related to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.bats.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Bats BYX Exchange, Inc., Bats BZX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., BOX Options Exchange LLC, C2 Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc. (''FINRA''), Investors' Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, NASDAQ BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC,[6] NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, NYSE Arca, Inc. and NYSE National, Inc.[7] (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act [8] and Rule 608 of Regulation NMS thereunder,[9] the CAT NMS Plan.[10] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act. The Plan was published for comment in the **Federal Register** on May 17, 2016,[11] and approved by the Commission, as modified, on November 15, 2016.[12] The Plan is designed to create, implement and maintain a consolidated audit trail (''CAT'') that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. The Plan accomplishes this by creating CAT NMS, LLC (the ''Company''), of which each Participant is a member, to operate the CAT.[13] Under the CAT NMS Plan, the Operating Committee of the Company (''Operating Committee'') has discretion to establish funding for the Company to operate the CAT, including establishing fees that the Participants will pay, and establishing fees for Industry Members that will be implemented by the Participants (''CAT Fees'').[14] The Participants are required to file with the SEC under Section 19(b) of the Exchange Act any such CAT Fees applicable to Industry Members that the Operating Committee approves.[15] Accordingly, Bats submits this fee filing to propose the Consolidated Audit Trail Funding Fees, which will require Industry Members that are Bats members to pay the CAT Fees determined by the Operating Committee.

(1) Executive Summary

The following provides an executive summary of the CAT funding model approved by the Operating Committee, as well as Industry Members' rights and obligations related to the payment of CAT Fees calculated pursuant to the CAT funding model. A detailed description of the CAT funding model and the CAT Fees follows this executive summary.

(A) CAT Funding Model

• *CAT Costs.* The CAT funding model is designed to establish CAT-specific fees to collectively recover the costs of building and operating the CAT from all CAT Reporters, including Industry Members and Participants. The overall CAT costs for the calculation of the CAT Fees in this fee filing are comprised of Plan Processor CAT costs and non-Plan Processor CAT costs incurred, and estimated to be incurred, from November 21, 2016 through November 21, 2017. (*See* Section 3(a)(2)(E) [sic] below [16])

• *Bifurcated Funding Model.* The CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the CAT would be borne by (1) Participants and Industry Members that are Execution Venues for Eligible Securities through fixed tier fees based on market share, and (2) Industry Members (other than alternative trading systems (''ATSs'') that execute transactions in Eligible Securities (''Execution Venue ATSs'')) through fixed tier fees based on message traffic for Eligible Securities. (*See* Section 3(a)(2) [sic] below)

• *Industry Member Fees.* Each Industry Member (other than Execution Venue ATSs) will be placed into one of nine tiers of fixed fees, based on ''message traffic'' in Eligible Securities for a defined period (as discussed below). Prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months. After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Unless otherwise specified, capitalized terms used in this fee filing are defined as set forth herein, the CAT Compliance Rule Series or in the CAT NMS Plan.

[6] ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Rel. No. 80248 (Mar. 15, 2017), 82 FR 14547 (Mar. 21, 2017); Securities Exchange Act Rel. No. 80326 (Mar. 29, 2017), 82 FR 16460 (Apr. 4, 2017); and Securities Exchange Act Rel. No. 80325 (Mar. 29, 2017), 82 FR 16445 (Apr. 4, 2017).

[7] National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Rel. No. 79902 (Jan. 30, 2017), 82 FR 9258 (Feb. 3, 2017).

[8] 15 U.S.C. 78k–1.

[9] 17 CFR 242.608.

[10] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

[11] Securities Exchange Act Rel. No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016).

[12] Securities Exchange Act Rel. No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''Approval Order'').

[13] The Plan also serves as the limited liability company agreement for the Company.

[14] Section 11.1(b) of the CAT NMS Plan.

[15] *Id.*

[16] The Commission notes that references to Sections 3(a)(2) and 3(a)(3) in this Executive Summary should be instead to Sections II.A.1.(2) and II.A.1.(3), respectively.

the CAT. Industry Members with lower levels of message traffic will pay a lower fee and Industry Members with higher levels of message traffic will pay a higher fee. (*See* Section 3(a)(2)(B) [sic] below)

• *Execution Venue Fees.* Each Equity Execution Venue will be placed in one of two tiers of fixed fees based on market share, and each Options Execution Venue will be placed in one of two tiers of fixed fees based on market share. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period. Equity Execution Venues with a larger market share will pay a larger CAT Fee than Equity Execution Venues with a smaller market share. Similarly, Options Execution Venues with a larger market share will pay a larger CAT Fee than Options Execution Venues with a smaller market share. (*See* Section 3(a)(2)(C) [sic] below)

• *Cost Allocation.* For the reasons discussed below, in designing the model, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. In addition, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. (*See* Section 3(a)(2)(D) [sic] below)

• *Comparability of Fees.* The CAT funding model requires that the CAT Fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venues and/or Industry Members). (*See* Section 3(a)(2)(F) [sic] below)

(B) CAT Fees for Industry Members

• *Fee Schedule.* The quarterly CAT Fees for each tier for Industry Members are set forth in the two fee schedules in the Consolidated Audit Trail Funding Fees, one for Equity ATSs and one for Industry Members other than Equity ATSs. (*See* Section 3(a)(3)(B) [sic] below)

• *Quarterly Invoices.* Industry Members will be billed quarterly for CAT Fees, with the invoices payable within 30 days. The quarterly invoices will identify within which tier the Industry Member falls. (*See* Section 3(a)(3)(C) [sic] below)

• *Centralized Payment.* Each Industry Member will receive from the Company one invoice for its applicable CAT Fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Operating Committee. (*See* Section 3(a)(3)(C) [sic] below)

• *Billing Commencement.* Industry Members will begin to receive invoices for CAT Fees as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence. (*See* Section 3(a)(2)(G) [sic] below)

(2) Description of the CAT Funding Model

Article XI of the CAT NMS Plan requires the Operating Committee to approve the operating budget, including projected costs of developing and operating the CAT for the upcoming year. As set forth in Article XI of the CAT NMS Plan, the CAT NMS Plan requires a bifurcated funding model, where costs associated with building and operating the Central Repository would be borne by (1) Participants and Industry Members that are Execution Venues through fixed tier fees based on market share, and (2) Industry Members (other than Execution Venue ATSs) through fixed tier fees based on message traffic. In its order approving the CAT NMS Plan, the Commission determined that the proposed funding model was ''reasonable'' [17] and ''reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT.'' [18]

More specifically, the Commission stated in approving the CAT NMS Plan that ''[t]he Commission believes that the proposed funding model is reasonably designed to allocate the costs of the CAT between the Participants and Industry Members.'' [19] The Commission further noted the following:

The Commission believes that the proposed funding model reflects a reasonable exercise of the Participants' funding authority to recover the Participants' costs related to the CAT. The CAT is a regulatory facility jointly owned by the Participants and . . . the Exchange Act specifically permits the Participants to charge their members fees to fund their self-regulatory obligations. The Commission further believes that the proposed funding model is designed to impose fees reasonably related to the Participants' self-regulatory obligations because the fees would be directly associated with the costs of establishing and maintaining the CAT, and not unrelated SRO services.[20]

Accordingly, the funding model imposes fees on both Participants and Industry Members.

In addition, as discussed in Appendix C of the CAT NMS Plan, the Operating Committee considered the advantages and disadvantages of a variety of alternative funding and cost allocation models before selecting the proposed model.[21] After analyzing the various alternatives, the Operating Committee determined that the proposed tiered, fixed fee funding model provides a variety of advantages in comparison to the alternatives. First, the fixed fee model, as opposed to a variable fee model, provides transparency, ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.[22] Additionally, a strictly variable or metered funding model based on message volume would be far more likely to affect market behavior and place an inappropriate burden on competition. Moreover, as the SEC noted in approving the CAT NMS Plan, ''[t]he Participants also have offered a reasonable basis for establishing a funding model based on broad tiers, in that it be may be easier to implement.'' [23]

[17] Approval Order at 84796.

[18] *Id.* at 84794.

[19] *Id.* at 84795.

[20] *Id.* at 84794.

[21] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[22] In choosing a tiered fee structure, the SROs concluded that the variety of benefits offered by a tiered fee structure, discussed above, outweighed the fact that Industry Members in any particular tier would pay different rates per message traffic order event (*e.g.,* an Industry Member with the largest amount of message traffic in one tier would pay a smaller amount per order event than an Industry Member in the same tier with the least amount of message traffic). Such variation is the natural result of a tiered fee structure.

[23] Approval Order at 84796.

In addition, multiple reviews of current broker-dealer order and trading data submitted under existing reporting requirements showed a wide range in activity among broker-dealers, with a number of broker-dealers submitting fewer than 1,000 orders per month and other broker-dealers submitting millions and even billions of orders in the same period. Accordingly, the CAT NMS Plan includes a tiered approach to fees. The tiered approach helps ensure that fees are equitably allocated among similarly situated CAT Reporters and furthers the goal of lessening the impact on smaller firms.[24] The self-regulatory organizations considered several approaches to developing a tiered model, including defining fee tiers based on such factors as size of firm, message traffic or trading dollar volume. After analyzing the alternatives, it was concluded that the tiering should be based on the relative impact of CAT Reporters on the CAT System.

Accordingly, the CAT NMS Plan contemplates that costs will be allocated across the CAT Reporters on a tiered basis to allocate costs to those CAT Reporters that contribute more to the costs of creating, implementing and maintaining the CAT.[25] The fees to be assessed at each tier are calculated so as to recoup a proportion of costs appropriate to the message traffic or market share (as applicable) from CAT Reporters in each tier. Therefore, Industry Members generating the most message traffic will be in the higher tiers, and therefore be charged a higher fee. Industry Members with lower levels of message traffic will be in lower tiers and will be assessed a smaller fee for the CAT.[26] Correspondingly, Execution Venues with the highest market share will be in the top tier, and therefore will be charged a higher fee. Execution Venues with a lower market share will be in the lower tier and will be assessed a smaller fee for the CAT.[27]

The Commission also noted in approving the CAT NMS Plan that ''[t]he Participants have offered a credible justification for using different criteria to charge Execution Venues (market share) and Industry Members (message traffic)'' [28] in the CAT funding model. While there are multiple factors that contribute to the cost of building, maintaining and using the CAT, processing and storage of incoming message traffic is one of the most significant cost drivers for the CAT.[29] Thus, the CAT NMS Plan provides that the fees payable by Industry Members (other than Execution Venue ATSs) will be based on the message traffic generated by such Industry Member.[30]

The CAT NMS Plan provides that the Operating Committee will use different criteria to establish fees for Execution Venues and non-Execution Venues due to the fundamental differences between the two types of entities. In particular, the CAT NMS Plan provides that fees charged to CAT Reporters that are Execution Venues will be based on the level of market share and that costs charged to Industry Members (other than Execution Venue ATSs) will be based upon message traffic.[31] Because most Participant message traffic consists of quotations, and Participants usually disseminate quotations in all instruments they trade, regardless of execution volume, Execution Venues that are Participants generally disseminate similar amounts of message traffic. Accordingly, basing fees for Execution Venues on message traffic would not provide the same degree of differentiation among Execution Venues that it does among Industry Members (other than Execution Venue ATSs). In contrast, execution volume more accurately delineates the different levels of trading activity of Execution Venues.[32]

The CAT NMS Plan's funding model also is structured to avoid a ''reduction in market quality.'' [33] The tiered, fixed fee funding model is designed to limit the disincentives to providing liquidity to the market. For example, the Participants expect that a firm that had a large volume of quotes would likely be categorized in one of the upper tiers, and would not be assessed a fee for this traffic directly as they would under a more directly metered model. In contrast, strictly variable or metered funding models based on message volume were far more likely to affect market behavior. In approving the CAT NMS Plan, the SEC stated that ''[t]he Participants also offered a reasonable basis for establishing a funding model based on broad tiers, in that it may be . . . less likely to have an incremental deterrent effect on liquidity provision.'' [34]

The CAT NMS Plan is structured to avoid potential conflicts raised by the Operating Committee determining fees applicable to its own members—the Participants. First, the Company will be operated on a ''break-even'' basis, with fees imposed to cover costs and an appropriate reserve. Any surpluses will be treated as an operational reserve to offset future fees and will not be distributed to the Participants as profits.[35] To ensure that the Participants' operation of the CAT will not contribute to the funding of their other operations, Section 11.1(c) of the CAT NMS Plan specifically states that ''[a]ny surplus of the Company's revenues over its expenses shall be treated as an operational reserve to offset future fees.'' In addition, as set forth in Article VIII of the CAT NMS Plan, the Company ''intends to operate in a manner such that it qualifies as a 'business league' within the meaning of Section 501(c)(6) of the [Internal Revenue] Code.'' To qualify as a business league, an organization must ''not [be] organized for profit and no part of the net earnings of [the organization can] inure[] to the benefit of any private shareholder or individual.'' [36] As the SEC stated when approving the CAT NMS Plan, ''the Commission believes that the Company's application for Section 501(c)(6) business league status addresses issues raised by commenters about the Plan's proposed allocation of profit and loss by mitigating concerns that the Company's earnings could be used to benefit individual Participants.'' [37]

Finally, by adopting a CAT-specific fee, the Participants will be fully transparent regarding the costs of the CAT. Charging a general regulatory fee, which would be used to cover CAT costs as well as other regulatory costs, would be less transparent than the selected approach of charging a fee designated to cover CAT costs only.

A full description of the funding model is set forth below. This description includes the framework for the funding model as set forth in the CAT NMS Plan, as well as the details as to how the funding model will be applied in practice, including the number of fee tiers and the applicable fees for each tier. Bats notes that the complete funding model is described below, including those fees that are to be paid by the Participants. The proposed Consolidated Audit Trail Funding Fees, however, do not apply to the Participants; the proposed Consolidated Audit Trail Funding Fees

[24] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

[25] Approval Order at 85005.

[26] *Id.*

[27] *Id.*

[28] *Id.* at 84796.

[29] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[30] Section 11.3(b) of the CAT NMS Plan.

[31] Section 11.2(c) of the CAT NMS Plan.

[32] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

[33] Section 11.2(e) of the CAT NMS Plan.

[34] Approval Order at 84796.

[35] *Id.* at 84792.

[36] 26 U.S.C. 501(c)(6).

[37] Approval Order at 84793.

only apply to Industry Members. The CAT fees for Participants will be imposed separately by the Operating Committee pursuant to the CAT NMS Plan.

(A) Funding Principles

Section 11.2 of the CAT NMS Plan sets forth the principles that the Operating Committee applied in establishing the funding for the Company. The Operating Committee has considered these funding principles as well as the other funding requirements set forth in the CAT NMS Plan and in Rule 613 in developing the proposed funding model. The following are the funding principles in Section 11.2 of the CAT NMS Plan:

- To create transparent, predictable revenue streams for the Company that are aligned with the anticipated costs to build, operate and administer the CAT and other costs of the Company;
- To establish an allocation of the Company's related costs among Participants and Industry Members that is consistent with the Exchange Act, taking into account the timeline for implementation of the CAT and distinctions in the securities trading operations of Participants and Industry Members and their relative impact upon the Company's resources and operations;
- To establish a tiered fee structure in which the fees charged to: (i) CAT Reporters that are Execution Venues, including ATSs, are based upon the level of market share; (ii) Industry Members' non-ATS activities are based upon message traffic; (iii) the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members);
- To provide for ease of billing and other administrative functions;
- To avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality; and
- To build financial stability to support the Company as a going concern.

(B) Industry Member Tiering

Under Section 11.3(b) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees to be payable by Industry Members, based on message traffic generated by such Industry Member, with the Operating Committee establishing at least five and no more than nine tiers.

The CAT NMS Plan clarifies that the fixed fees payable by Industry Members pursuant to Section 11.3(b) shall, in addition to any other applicable message traffic, include message traffic generated by: (i) An ATS that does not execute orders that is sponsored by such Industry Member; and (ii) routing orders to and from any ATS sponsored by such Industry Member. In addition, the Industry Member fees will apply to Industry Members that act as routing broker-dealers for exchanges. The Industry Member fees will not be applicable, however, to an ATS that qualifies as an Execution Venue, as discussed in more detail in the section on Execution Venue tiering.

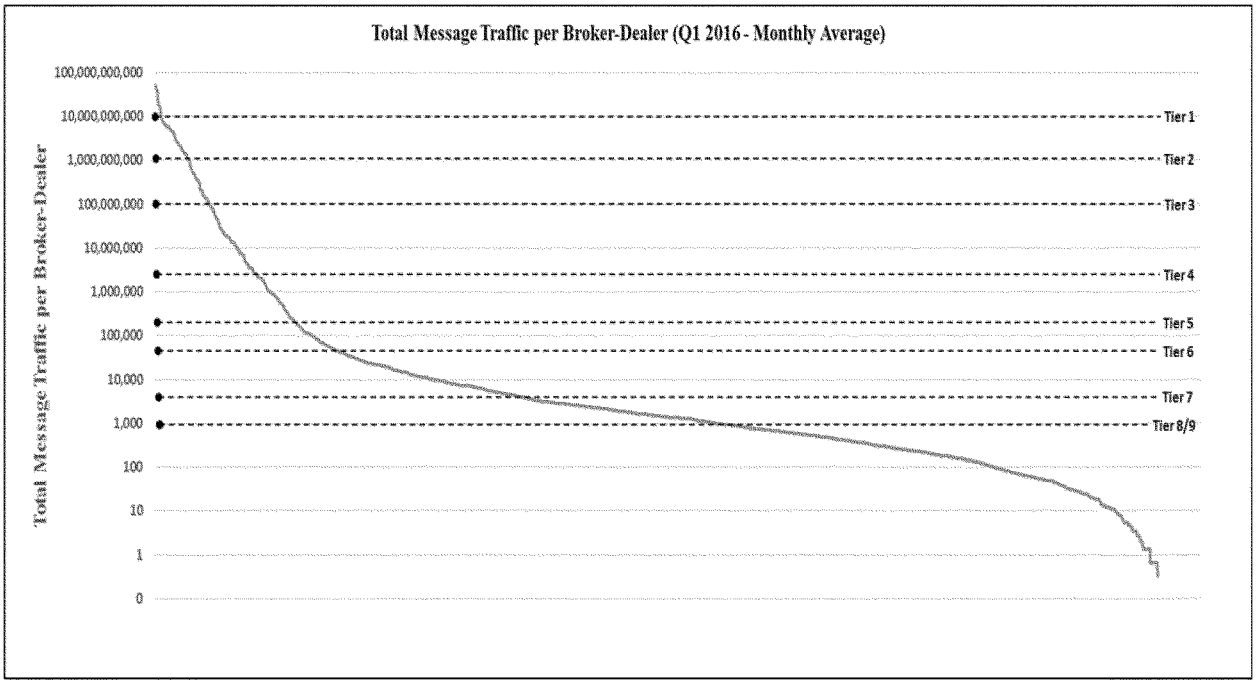
In accordance with Section 11.3(b), the Operating Committee approved a tiered fee structure for Industry Members (other than Execution Venue ATSs) as described in this section. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on CAT System resources of different Industry Members, and that establish comparable fees among the CAT Reporters with the most Reportable Events. The Operating Committee has determined that establishing nine tiers results in the fairest allocation of fees, best distinguishing between Industry Members with differing levels of message traffic. Thus, each such Industry Member will be placed into one of nine tiers of fixed fees, based on ''message traffic'' for a defined period (as discussed below). A nine tier structure was selected to provide the widest range of levels for tiering Industry Members such that Industry Members submitting significantly less message traffic to the CAT would be adequately differentiated from Industry Members submitting substantially more message traffic. The Operating Committee considered historical message traffic generated by Industry Members across all exchanges and as submitted to FINRA's Order Audit Trail System (''OATS''), and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee determined that nine tiers would best group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden of Industry Members that have less CAT-related activity.

Each Industry Member (other than Execution Venue ATSs) will be ranked by message traffic and tiered by predefined Industry Member percentages (the ''Industry Member Percentages''). The Operating Committee determined to use predefined percentages rather than fixed volume thresholds to allow the funding model to ensure that the total CAT fees collected recover the intended CAT costs regardless of changes in the total level of message traffic. To determine the fixed percentage of Industry Members in each tier, the Operating Committee analyzed historical message traffic generated by Industry Members across all exchanges and as submitted to OATS, and considered the distribution of firms with similar levels of message traffic, grouping together firms with similar levels of message traffic. Based on this, the Operating Committee identified tiers that would group firms with similar levels of message traffic, charging those firms with higher impact on the CAT more, while lowering the burden on Industry Members that have less CAT-related activity.

The percentage of costs recovered by each Industry Member tier will be determined by predefined percentage allocations (the ''Industry Member Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter message traffic on the CAT System as well as the distribution of total message volume across Industry Members while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Industry Members in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical message traffic upon which Industry Members had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to tiers with higher levels of message traffic while avoiding any inappropriate burden on competition. Furthermore, by using percentages of Industry Members and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Industry Members or the total level of message traffic.

The following chart illustrates the breakdown of nine Industry Member tiers across the monthly average of total

equity and equity options orders, cancels and quotes in Q1 2016 and identifies relative gaps across varying levels of Industry Member message traffic as well as message traffic thresholds between the largest of Industry Member message traffic gaps. The Operating Committee referenced similar distribution illustrations to determine the appropriate division of Industry Member percentages in each tier by considering the grouping of firms with similar levels of message traffic and seeking to identify relative breakpoints in the message traffic between such groupings. In reviewing the chart and its corresponding table, note that while these distribution illustrations were referenced to help differentiate between Industry Member tiers, the proposed funding model is directly driven, not by fixed message traffic thresholds, but rather by fixed percentages of Industry Members across tiers to account for fluctuating levels of message traffic across time and to provide for the financial stability of the CAT by ensuring that the funding model will recover the required amounts regardless of changes in the number of Industry Members or the amount of message traffic. Actual messages in any tier will vary based on the actual traffic in a given measurement period, as well as the number of firms included in the measurement period. The Industry Member Percentages and Industry Member Recovery Allocation for each tier will remain fixed with each Industry Member's tier to be reassigned periodically, as described below in Section 3(a)(1)(H) [sic].




| Industry Member tier | Monthly average message traffic per Industry Member (orders, quotes and cancels) |
|---|---|
| Tier 1 | >10,000,000,000 |
| Tier 2 | >1,000,000,000 |
| Tier 3 | >100,000,000 |
| Tier 4 | >2,500,000 |
| Tier 5 | >200,000 |
| Tier 6 | >50,000 |
| Tier 7 | >5,000 |
| Tier 8 | >1,000 |
| Tier 9 | ≤1,000 |

Based on the above analysis, the Operating Committee approved the following Industry Member Percentages and Recovery Allocations:

| Industry Member tier | Percentage of Industry Members | Percentage of Industry Member Recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 0.500 | 8.50 | 6.38 |
| Tier 2 | 2.500 | 35.00 | 26.25 |
| Tier 3 | 2.125 | 21.25 | 15.94 |

| Industry Member tier | Percentage of Industry Members | Percentage of Industry Member Recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 4 | 4.625 | 15.75 | 11.81 |
| Tier 5 | 3.625 | 7.75 | 5.81 |
| Tier 6 | 4.000 | 5.25 | 3.94 |
| Tier 7 | 17.500 | 4.50 | 3.38 |
| Tier 8 | 20.125 | 1.50 | 1.13 |
| Tier 9 | 45.000 | 0.50 | 0.38 |
| Total | 100 | 100 | 75 |

For the purposes of creating these tiers based on message traffic, the Operating Committee determined to define the term ''message traffic'' separately for the period before the commencement of CAT reporting and for the period after the start of CAT reporting. The different definition for message traffic is necessary as there will be no Reportable Events as defined in the Plan, prior to the commencement of CAT reporting. Accordingly, prior to the start of CAT reporting, ''message traffic'' will be comprised of historical equity and equity options orders, cancels and quotes provided by each exchange and FINRA over the previous three months.[38] Prior to the start of CAT reporting, orders would be comprised of the total number of equity and equity options orders received and originated by a member of an exchange or FINRA over the previous three-month period, including principal orders, cancel/replace orders, market maker orders originated by a member of an exchange, and reserve (iceberg) orders as well as order routes and executions originated by a member of FINRA, and excluding order rejects and implied orders.[39] In addition, prior to the start of CAT reporting, cancels would be comprised of the total number of equity and equity option cancels received and originated by a member of an exchange or FINRA over a three-month period, excluding order modifications (*e.g.,* order updates, order splits, partial cancels). Furthermore, prior to the start of CAT reporting, quotes would be comprised of information readily available to the exchanges and FINRA, such as the total number of historical equity and equity options quotes received and originated by a member of an exchange or FINRA over the prior three-month period.

After an Industry Member begins reporting to the CAT, ''message traffic'' will be calculated based on the Industry Member's Reportable Events reported to the CAT as will be defined in the Technical Specifications.[40]

The Operating Committee has determined to calculate fee tiers every three months, on a calendar quarter basis, based on message traffic from the prior three months. Based on its analysis of historical data, the Operating Committee believes that calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Industry Members while still providing predictability in the tiering for Industry Members. Because fee tiers will be calculated based on message traffic from the prior three months, the Operating Committee will begin calculating message traffic based on an Industry Member's Reportable Events reported to the CAT once the Industry Member has been reporting to the CAT for three months. Prior to that, fee tiers will be calculated as discussed above with regard to the period prior to CAT reporting.

(C) Execution Venue Tiering

Under Section 11.3(a) of the CAT NMS Plan, the Operating Committee is required to establish fixed fees payable by Execution Venues. Section 1.1 of the CAT NMS Plan defines an Execution Venue as ''a Participant or an alternative trading system (''ATS'') (as defined in Rule 300 of Regulation ATS) that operates pursuant to Rule 301 of Regulation ATS (excluding any such ATS that does not execute orders).'' [41]

The Participants determined that ATSs should be included within the definition of Execution Venue. Given the similarity between the activity of exchanges and ATSs, both of which meet the definition of an ''exchange'' as set forth in the Exchange Act and the fact that the similar trading models would have similar anticipated burdens on the CAT, the Participants determined that ATSs should be treated in the same manner as the exchanges for the purposes of determining the level of fees associated with the CAT.[42]

Given the differences between Execution Venues that trade NMS Stocks and/or OTC Equity Securities and Execution Venues that trade Listed Options, Section 11.3(a) addresses Execution Venues that trade NMS Stocks and/or OTC Equity Securities separately from Execution Venues that trade Listed Options. Equity and Options Execution Venues are treated separately for two reasons. First, the differing quoting behavior of Equity and Options Execution Venues makes comparison of activity between Execution Venues difficult. Second, Execution Venue tiers are calculated based on market share of share volume, and it is therefore difficult to compare market share between asset classes (*i.e.,* equity shares versus options contracts). Discussed below is how the funding model treats the two types of Execution Venues.

(I) NMS Stocks and OTC Equity Securities

Section 11.3(a)(i) of the CAT NMS Plan states that each Execution Venue that (i) executes transactions or, (ii) in the case of a national securities association, has trades reported by its

[38] The SEC approved exemptive relief permitting Options Market Maker quotes to be reported to the Central Repository by the relevant Options Exchange in lieu of requiring that such reporting be done by both the Options Exchange and the Options Market Maker, as required by Rule 613 of Regulation NMS. *See* Securities Exchange Act Release No. 77265 (Mar. 1, 2017 [sic], 81 FR 11856 (Mar. 7, 2016). This exemption applies to Options Market Maker quotes for CAT reporting purposes only. Therefore, notwithstanding the reporting exemption provided for Options Market Maker quotes, Options Market Maker quotes will be included in the calculation of total message traffic for Options Market Makers for purposes of tiering under the CAT funding model both prior to CAT reporting and once CAT reporting commences.

[39] Consequently, firms that do not have ''message traffic'' reported to an exchange or OATS before they are reporting to the CAT would not be subject to a fee until they begin to report information to CAT.

[40] If an Industry Member (other than an Execution Venue ATS) has no orders, cancels or quotes prior to the commencement of CAT Reporting, or no Reportable Events after CAT reporting commences, then the Industry Member would not have a CAT fee obligation.

[41] Although FINRA does not operate an execution venue, because it is a Participant, it is considered an ''Execution Venue'' under the Plan for purposes of determining fees.

[42] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85005.

members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange, in NMS Stocks or OTC Equity Securities will pay a fixed fee depending on the market share of that Execution Venue in NMS Stocks and OTC Equity Securities, with the Operating Committee establishing at least two and not more than five tiers of fixed fees, based on an Execution Venue's NMS Stocks and OTC Equity Securities market share. For these purposes, market share for Execution Venues that execute transactions will be calculated by share volume, and market share for a national securities association that has trades reported by its members to its trade reporting facility or facilities for reporting transactions effected otherwise than on an exchange in NMS Stocks or OTC Equity Securities will be calculated based on share volume of trades reported, provided, however, that the share volume reported to such national securities association by an Execution Venue shall not be included in the calculation of such national security association's market share.

In accordance with Section 11.3(a)(i) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Equity Execution Venues and Option Execution Venues. In determining the Equity Execution Venue Tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Equity Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Equity Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's NMS Stocks and OTC Equity Securities market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to the non-Execution Venue Industry Members to determine the number of tiers for Equity Execution Venues. The Operating Committee determined to establish two tiers for Equity Execution Venues, rather than a larger number of tiers as established for non-Execution Venue Industry Members, because the two tiers were sufficient to distinguish between the smaller number of Equity Execution Venues based on market share. Furthermore, the incorporation of additional Equity Execution Venue tiers would result in significantly higher fees for Tier 1 Equity Execution Venues and diminish comparability between Execution Venues and Industry Members.

Each Equity Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Equity Execution Venue Percentages''). In determining the fixed percentage of Equity Execution Venues in each tier, the Operating Committee looked at historical market share of share volume for execution venues. Equities Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats Global Markets, Inc. (''Bats''). ATS market share of share volume was sourced from market statistics made publicly-available by FINRA. FINRA trading [sic] reporting facility (''TRF'') market share of share volume was sourced from market statistics made publicly available by Bats. As indicated by FINRA, ATSs accounted for 37.80% of the share volume across the TRFs during the recent tiering period. A 37.80/62.20 split was applied to the ATS and non-ATS breakdown of FINRA market share, with FINRA tiered based only on the non-ATS portion of its TRF market share of share volume.

Based on this, the Operating Committee considered the distribution of Execution Venues, and grouped together Execution Venues with similar levels of market share of share volume. In doing so, the Participants considered that, as previously noted, Execution Venues in many cases have similar levels of message traffic due to quoting activity, and determined that it was simpler and more appropriate to have fewer, rather than more, Execution Venue tiers to distinguish between Execution Venues.

The percentage of costs recovered by each Equity Execution Venue tier will be determined by predefined percentage allocations (the ''Equity Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Equity Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Accordingly, following the determination of the percentage of Execution Venues in each tier, the Operating Committee identified the percentage of total market volume for each tier based on the historical market share upon which Execution Venues had been initially ranked. Taking this into account along with the resulting percentage of total recovery, the percentage allocation of costs recovered for each tier were assigned, allocating higher percentages of recovery to the tier with a higher level of market share while avoiding any inappropriate burden on competition. Furthermore, due to the similar levels of impact on the CAT System across Execution Venues, there is less variation in CAT Fees between the highest and lowest of tiers for Execution Venues. Furthermore, by using percentages of Equity Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Equity Execution Venues or changes in market share.

Based on this analysis, the Operating Committee approved the following Equity Execution Venue Percentages and Recovery Allocations:

| Equity Execution Venue tier | Percentage of Equity Execution Venues | Percentage of Execution Venue Recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 25.00 | 26.00 | 6.50 |
| Tier 2 | 75.00 | 49.00 | 12.25 |
| Total | 100 | 75 | 18.75 |

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Equity Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Equity Execution Venue tiers, the proposed funding model is directly driven not by

market share thresholds, but rather by fixed percentages of Equity Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Equity Execution Venues included in the measurement period. The Equity Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Equity Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

| Equity Execution Venue tier | Equity market share of share volume |
|---|---|
| Tier 1 | ≥1 |
| Tier 2 | <1 |

(II) Listed Options

Section 11.3(a)(ii) of the CAT NMS Plan states that each Execution Venue that executes transactions in Listed Options will pay a fixed fee depending on the Listed Options market share of that Execution Venue, with the Operating Committee establishing at least two and no more than five tiers of fixed fees, based on an Execution Venue's Listed Options market share. For these purposes, market share will be calculated by contract volume.

In accordance with Section 11.3(a)(ii) of the CAT NMS Plan, the Operating Committee approved a tiered fee structure for Options Execution Venues. In determining the tiers, the Operating Committee considered the funding principles set forth in Section 11.2 of the CAT NMS Plan, seeking to create funding tiers that take into account the relative impact on system resources of different Options Execution Venues, and that establish comparable fees among the CAT Reporters with the most Reportable Events. Each Options Execution Venue will be placed into one of two tiers of fixed fees, based on the Execution Venue's Listed Options market share. In choosing two tiers, the Operating Committee performed an analysis similar to that discussed above with regard to Industry Members (other than Execution Venue ATSs) to determine the number of tiers for Options Execution Venues. The Operating Committee determined to establish two tiers for Options Execution Venues, rather than a larger number of tiers as established for Industry Members (other than Execution Venue ATSs), because the two tiers were sufficient to distinguish between the smaller number of Options Execution Venues based on market share. Furthermore, due to the smaller number of Options Execution Venues, the incorporation of additional Options Execution Venue tiers would result in significantly higher fees for Tier 1 Options Execution Venues and reduce comparability between Execution Venues and Industry Members.

Each Options Execution Venue will be ranked by market share and tiered by predefined Execution Venue percentages, (the ''Options Execution Venue Percentages''). To determine the fixed percentage of Options Execution Venues in each tier, the Operating Committee analyzed the historical and publicly available market share of Options Execution Venues to group Options Execution Venues with similar market shares across the tiers. Options Execution Venue market share of share volume were sourced from market statistics made publicly-available by Bats. The process for developing the Options Execution Venue Percentages was the same as discussed above with regard to Equity Execution Venues.

The percentage of costs recovered by each Options Execution Venue tier will be determined by predefined percentage allocations (the ''Options Execution Venue Recovery Allocation''). In determining the fixed percentage allocation of costs recovered for each tier, the Operating Committee considered the impact of CAT Reporter market share activity on the CAT System as well as the distribution of total market volume across Options Execution Venues while seeking to maintain comparable fees among the largest CAT Reporters. Furthermore, by using percentages of Options Execution Venues and costs recovered per tier, the Operating Committee sought to include stability and elasticity within the funding model, allowing the funding model to respond to changes in either the total number of Options Execution Venues or changes in market share. The process for developing the Options Execution Venue Recovery Allocation was the same as discussed above with regard to Equity Execution Venues.

Based on this analysis, the Operating Committee approved the following Options Execution Venue Percentages and Recovery Allocations:

| Options Execution Venue tier | Percentage of Options Execution Venues | Percentage of Execution Venue Recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 75.00 | 20.00 | 5.00 |
| Tier 2 | 25.00 | 5.00 | 1.25 |
| Total | 100 | 25 | 6.25 |

The following table exhibits the relative separation of market share of share volume between Tier 1 and Tier 2 Options Execution Venues. In reviewing the table, note that while this division was referenced as a data point to help differentiate between Options Execution Venue tiers, the proposed funding model is directly driven, not by market share thresholds, but rather by fixed percentages of Options Execution Venues across tiers to account for fluctuating levels of market share across time. Actual market share in any tier will vary based on the actual market activity in a given measurement period, as well as the number of Options Execution Venues included in the measurement period. The Options Execution Venue Percentages and Equity Execution Venue Recovery Allocation for each tier will remain fixed with each Options Execution Venue tier to be reassigned periodically, as described below in Section 3(a)(1)(I) [sic].

| Options Execution Venue tier | Options market share of share volume |
|---|---|
| Tier 1 | ≥1 |
| Tier 2 | <1 |

(III) Market Share/Tier Assignments

The Operating Committee determined that, prior to the start of CAT reporting, market share for Execution Venues

would be sourced from publicly-available market data. Options and equity volumes for Participants will be sourced from market data made publicly available by Bats while Execution Venue ATS volumes will be sourced from market data made publicly available by FINRA. Set forth in the Appendix are two charts, one listing the current Equity Execution Venues, each with its rank and tier, and one listing the current Options Execution Venues, each with its rank and tier.

After the commencement of CAT reporting, market share for Execution Venues will be sourced from data reported to the CAT. Equity Execution Venue market share will be determined by calculating each Equity Execution Venue's proportion of the total volume of NMS Stock and OTC Equity shares reported by all Equity Execution Venues during the relevant time period. Similarly, market share for Options Execution Venues will be determined by calculating each Options Execution Venue's proportion of the total volume of Listed Options contracts reported by all Options Execution Venues during the relevant time period.

The Operating Committee has determined to calculate fee tiers for Execution Venues every three months based on market share from the prior three months. Based on its analysis of historical data, the Operating Committee believes calculating tiers based on three months of data will provide the best balance between reflecting changes in activity by Execution Venues while still providing predictability in the tiering for Execution Venues.

(D) Allocation of Costs

In addition to the funding principles discussed above, including comparability of fees, Section 11.1(c) of the CAT NMS Plan also requires expenses to be fairly and reasonably shared among the Participants and Industry Members. Accordingly, in developing the proposed fee schedules pursuant to the funding model, the Operating Committee calculated how the CAT costs would be allocated between Industry Members and Execution Venues, and how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. These determinations are described below.

(I) Allocation Between Industry Members and Execution Venues

In determining the cost allocation between Industry Members (other than Execution Venue ATSs) and Execution Venues, the Operating Committee analyzed a range of possible splits for revenue recovered from such Industry Members and Execution Venues. Based on this analysis, the Operating Committee determined that 75 percent of total costs recovered would be allocated to Industry Members (other than Execution Venue ATSs) and 25 percent would be allocated to Execution Venues. The Operating Committee determined that this 75/25 division maintained the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members and/or exchange licenses). For example, the cost allocation establishes fees for the largest Industry Members (*i.e.,* those Industry Members in Tiers 1, 2 and 3) that are comparable to the largest Equity Execution Venues and Options Execution Venues (*i.e.,* those Execution Venues in Tier 1). In addition, the cost allocation establishes fees for Execution Venue complexes that are comparable to those of Industry Member complexes. For example, when analyzing alternative allocations, other possible allocations led to much higher fees for larger Industry Members than for larger Execution Venues or vice versa, and/or led to much higher fees for Industry Member complexes than Execution Venue complexes or vice versa.

Furthermore, the allocation of total CAT costs recovered recognizes the difference in the number of CAT Reporters that are Industry Members versus CAT Reporters that are Execution Venues. Specifically, the cost allocation takes into consideration that there are approximately 25 times more Industry Members expected to report to the CAT than Execution Venues (*e.g.,* an estimated 1,630 Industry Members versus 70 Execution Venues as of January 2017).

(II) Allocation Between Equity Execution Venues and Options Execution Venues

The Operating Committee also analyzed how the portion of CAT costs allocated to Execution Venues would be allocated between Equity Execution Venues and Options Execution Venues. In considering this allocation of costs, the Operating Committee analyzed a range of alternative splits for revenue recovered between Equity and Options Execution Venues, including a 70/30, 67/33, 65/35, 50/50 and 25/75 split. Based on this analysis, the Operating Committee determined to allocate 75 percent of Execution Venue costs recovered to Equity Execution Venues and 25 percent to Options Execution Venues. The Operating Committee determined that a 75/25 division between Equity and Options Execution Venues maintained elasticity across the funding model as well the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues. For example, the allocation establishes fees for the larger Equity Execution Venues that are comparable to the larger Options Execution Venues, and fees for the smaller Equity Execution Venues that are comparable to the smaller Options Execution Venues. In addition to fee comparability between Equity Execution Venues and Options Execution Venues, the allocation also establishes equitability between larger (Tier 1) and smaller (Tier 2) Execution Venues based upon the level of market share. Furthermore, the allocation is intended to reflect the relative levels of current equity and options order events.

(E) Fee Levels

The Operating Committee determined to establish a CAT-specific fee to collectively recover the costs of building and operating the CAT. Accordingly, under the funding model, the sum of the CAT Fees is designed to recover the total cost of the CAT. The Operating Committee has determined overall CAT costs to be comprised of Plan Processor costs and non-Plan Processor costs, which are estimated to be $50,700,000 in total for the year beginning November 21, 2016.[43]

The Plan Processor costs relate to costs incurred by the Plan Processor and consist of the Plan Processor's current estimates of average yearly ongoing costs, including development cost, which total $37,500,000. This amount is based upon the fees due to the Plan Processor pursuant to the agreement with the Plan Processor.

The non-Plan Processor estimated costs incurred and to be incurred by the Company through November 21, 2017 consist of three categories of costs. The first category of such costs are third party support costs, which include historic legal fees, consulting fees and audit fees from November 21, 2016 until the date of filing as well as estimated third party support costs for the rest of the year. These amount to an estimated $5,200,000. The second category of non-Plan Processor costs are estimated insurance costs for the year. Based on discussions with potential insurance providers, assuming $2–5 million insurance premium on $100 million in

[43] It is anticipated that CAT-related costs incurred prior to November 21, 2016 will be addressed via a separate fee filing.

coverage, the Company has received an estimate of $3,000,000 for the annual cost. The final cost figures will be determined following receipt of final underwriter quotes. The third category of non-Plan Processor costs is the operational reserve, which is comprised of three months of ongoing Plan Processor costs ($9,375,000), third party support costs ($1,300,000) and insurance costs ($750,000). The Operating Committee aims to accumulate the necessary funds for the establishment of the three-month operating reserve for the Company through the CAT Fees charged to CAT Reporters for the year. On an ongoing basis, the Operating Committee will account for any potential need for the replenishment of the operating reserve or other changes to total cost during its annual budgeting process. The following table summarizes the Plan Processor and non-Plan Processor cost components which comprise the total CAT costs of $50,700,000.

| Cost category | Cost component | Amount |
|---|---|---|
| Plan Processor | Operational Costs | $37,500,000 |
| Non-Plan Processor | Third Party Support Costs | 5,200,000 |
| | Operational Reserve | [44] 5,000,000 |
| | Insurance Costs | 3,000,000 |
| Estimated Total | | 50,700,000 |

Based on the estimated costs and the calculations for the funding model described above, the Operating Committee determined to impose the following fees: [45]

For Industry Members (other than Execution Venue ATSs):

| Tier | Monthly CAT Fee | Quarterly CAT Fee | CAT Fees paid annually [46] |
|---|---|---|---|
| 1 | $33,668 | $101,004 | $404,016 |
| 2 | 27,051 | 81,153 | 324,612 |
| 3 | 19,239 | 57,717 | 230,868 |
| 4 | 6,655 | 19,965 | 79,860 |
| 5 | 4,163 | 12,489 | 49,956 |
| 6 | 2,560 | 7,680 | 30,720 |
| 7 | 501 | 1,503 | 6,012 |
| 8 | 145 | 435 | 1,740 |
| 9 | 22 | 66 | 264 |

For Execution Venues for NMS Stocks and OTC Equity Securities:

| Tier | Monthly CAT Fee | Quarterly CAT Fee | CAT Fees paid annually [47] |
|---|---|---|---|
| 1 | $21,125 | $63,375 | $253,500 |
| 2 | 12,940 | 38,820 | 155,280 |

For Execution Venues for Listed Options:

| Tier | Monthly CAT Fee | Quarterly CAT Fee | CAT Fees paid annually [48] |
|---|---|---|---|
| 1 | $19,205 | $57,615 | $230,460 |
| 2 | 13,204 | 39,612 | 158,448 |

As noted above, the fees set forth in the tables reflect the Operating Committee's decision to ensure comparable fees between Execution Venues and Industry Members. The fees of the top tiers for Industry Members (other than Execution Venue ATSs) are not identical to the top tier for Execution Venues, however, because the

[44] This $5,000,000 represents the gradual accumulation of the funds for a target operating reserve of $11,425,000.

[45] Note that all monthly, quarterly and annual CAT Fees have been rounded to the nearest dollar.

[46] This column represents the approximate total CAT Fees paid each year by each Industry Member (other than Execution Venue ATSs) (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[47] This column represents the approximate total CAT Fees paid each year by each Execution Venue for NMS Stocks and OTC Equity Securities (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

[48] This column represents the approximate total CAT Fees paid each year by each Execution Venue for Listed Options (*i.e.,* ''CAT Fees Paid Annually'' = ''Monthly CAT Fee'' × 12 months).

Operating Committee also determined that the fees for Execution Venue complexes should be comparable to those of Industry Member complexes. The difference in the fees reflects this decision to recognize affiliations.

The Operating Committee has calculated the schedule of effective fees for Industry Members (other than Execution Venue ATSs) and Execution Venues in the following manner. Note that the calculation of CAT Reporter fees assumes 53 Equity Execution Venues, 15 Options Execution Venues and 1,631 Industry Members (other than Execution Venue ATSs) as of January 2017.

CALCULATION OF ANNUAL TIER FEES FOR INDUSTRY MEMBERS

["IM"]

| Industry Member tier | Percentage of Industry Members | Percentage of Industry Member recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 0.500 | 8.50 | 6.38 |
| Tier 2 | 2.500 | 35.00 | 26.25 |
| Tier 3 | 2.125 | 21.25 | 15.94 |
| Tier 4 | 4.625 | 15.75 | 11.81 |
| Tier 5 | 3.625 | 7.75 | 5.81 |
| Tier 6 | 4.000 | 5.25 | 3.94 |
| Tier 7 | 17.500 | 4.50 | 3.38 |
| Tier 8 | 20.125 | 1.50 | 1.13 |
| Tier 9 | 45.000 | 0.50 | 0.38 |
| Total | 100 | 100 | 75 |

| Industry Member tier | Estimated number of Industry Members |
|---|---|
| Tier 1 | 8 |
| Tier 2 | 41 |
| Tier 3 | 35 |
| Tier 4 | 75 |
| Tier 5 | 59 |
| Tier 6 | 65 |
| Tier 7 | 285 |
| Tier 8 | 328 |
| Tier 9 | 735 |
| Total | 1,631 |

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**Calculation 1.1 (Calculation of a Tier 1 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 0.5% [% of Tier 1 IMs] = 8 [Estimated Tier 1 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 8.50\%\ [\text{\% of Tier 1 IM Recovery}]}{8\ [\text{Estimated Tier 1 IMs}]}\right) \div 12\ [\text{Months per year}] = \$33{,}668$$

**Calculation 1.2 (Calculation of a Tier 2 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 2.5% [% of Tier 2 IMs] = 41 [Estimated Tier 2 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 35\%\ [\text{\% of Tier 2 IM Recovery}]}{41\ [\text{Estimated Tier 2 IMs}]}\right) \div 12\ [\text{Months per year}] = \$27{,}051$$

**Calculation 1.3 (Calculation of a Tier 3 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 2.125% [% of Tier 3 IMs] = 35 [Estimated Tier 3 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 21.25\%\ [\text{\% of Tier 3 IM Recovery}]}{35\ [\text{Estimated Tier 3 IMs}]}\right) \div 12\ [\text{Months per year}] = \$19{,}239$$

**Calculation 1.4 (Calculation of a Tier 4 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 4.625% [% of Tier 4 IMs] = 75 [Estimated Tier 4 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 15.75\%\ [\text{\% of Tier 4 IM Recovery}]}{75\ [\text{Estimated Tier 4 IMs}]}\right) \div 12\ [\text{Months per year}] = \$6{,}655$$

**Calculation 1.5 (Calculation of a Tier 5 Industry Member Annual Fee)**

1,631 [Estimated Tot. IMs] × 3.625% [% of Tier 5 IMs] = 59 [Estimated Tier 5 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 7.75\%\ [\text{\% of Tier 5 IM Recovery}]}{59\ [\text{Estimated Tier 5 IMs}]}\right) \div 12\ [\text{Months per year}] = \$4{,}163$$

**Calculation 1.6 (Calculation of a Tier 6 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 4% [% of Tier 6 IMs] = 65 [Estimated Tier 6 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 5.25\%\ [\text{\% of Tier 6 IM Recovery}]}{65\ [\text{Estimated Tier 6 IMs}]}\right) \div 12\ [\text{Months per year}] = \$2{,}560$$

**Calculation 1.7 (Calculation of a Tier 7 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 17.5% [% of Tier 7 IMs] = 285 [Estimated Tier 7 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 4.50\%\ [\text{\% of Tier 7 IM Recovery}]}{285\ [\text{Estimated Tier 7 IMs}]}\right) \div 12\ [\text{Months per year}] = \$501$$

**Calculation 1.8 (Calculation of a Tier 8 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 20.125% [% of Tier 8 IMs] = 328 [Estimated Tier 8 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 1.50\%\ [\text{\% of Tier 8 IM Recovery}]}{328\ [\text{Estimated Tier 8 IMs}]}\right) \div 12\ [\text{Months per year}] = \$145$$

**Calculation 1.9 (Calculation of a Tier 9 Industry Member Monthly Fee)**

1,631 [Estimated Tot. IMs] × 45% [% of Tier 9 IMs] = 735 [Estimated Tier 9 IMs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 75\%\ [\text{IM \% of Tot.Ann.CAT Costs}] \times 0.50\%\ [\text{\% of Tier 9 IM Recovery}]}{735\ [\text{Est.Tier 9 IMs}]}\right) \div 12\ [\text{Months per year}] = \$22$$

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CALCULATION OF ANNUAL TIER FEES FOR EQUITY EXECUTION VENUES

["EV"]

| Equity Execution Venue tier | Percentage of Equity Execution Venues | Percentage of Execution Venue recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 25.00 | 26.00 | 6.50 |
| Tier 2 | 75.00 | 49.00 | 12.25 |
| Total | 100 | 75 | 18.75 |

| Equity Execution Venue tier | Estimated number of Equity Execution Venues |
|---|---|
| Tier 1 | 13 |
| Tier 2 | 40 |
| Total | 53 |

**Calculation 2.1 (Calculation of a Tier 1 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 25% [% of Tier 1 Equity EVs]
= 13 [Estimated Tier 1 Equity EVs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 26\%\ [\text{\% of Tier 1 Equity EV Recovery}]}{13\ [\text{Estimated Tier 1 Equity EVs}]}\right) \div$$

12 [Months per year] = $\mathbf{\$21{,}125}$

**Calculation 2.2 (Calculation of a Tier 2 Equity Execution Venue Monthly Fee)**

52 [Estimated Tot. Equity EVs] × 75% [% of Tier 2 Equity EVs] =
40 [Estimated Tier 2 Equity EVs]

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot. Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 49\%\ [\text{\% of Tier 2 Equity EV Recovery}]}{40\ [\text{Estimated Tier 2 Equity EVs}]}\right) \div$$

12 [Months per year] = $\mathbf{\$12{,}940}$

CALCULATION OF ANNUAL TIER FEES FOR OPTIONS EXECUTION VENUES

["EV"]

| Options Execution Venue tier | Percentage of Options Execution Venues | Percentage of Execution Venue recovery | Percentage of total recovery |
|---|---|---|---|
| Tier 1 | 75.00 | 20.00 | 5.00 |
| Tier 2 | 25.00 | 5.00 | 1.25 |
| Total | 100 | 25 | 6.25 |

| Options Execution Venue tier | Estimated number of Options Execution Venues |
|---|---|
| Tier 1 | 11 |
| Tier 2 | 4 |
| Total | 15 |

**Calculation 3.1 (Calculation of a Tier 1 Options Execution Venue Monthly Fee)**

$$15\ [\text{Estimated Tot. Options EVs}] \times 75\%\ [\%\ \text{of Tier 1 Options EVs}] = 11\ [\text{Estimated Tier 1 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 20\%\ [\%\ \text{of Tier 1 Options EV Recovery}]}{11\ [\text{Estimated Tier 1 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$19{,}205}$$

**Calculation 3.2 (Calculation of a Tier 2 Options Execution Venue Annual Fee)**

$$15\ [\text{Estimated Tot. Options EVs}] \times 25\%\ [\%\ \text{of Tier 2 Options EVs}] = 4\ [\text{Estimated Tier 2 Options EVs}]$$

$$\left(\frac{\$50{,}700{,}000\ [\text{Tot.Ann.CAT Costs}] \times 25\%\ [\text{EV \% of Tot.Ann.CAT Costs}] \times 5\%\ [\%\ \text{of Tier 2 Options EV Recovery}]}{4\ [\text{Estimated Tier 2 Options EVs}]}\right) \div 12\ [\text{Months per year}] = \mathbf{\$13{,}204}$$

TRACEABILITY OF TOTAL CAT FEES

| Type | Industry Member tier | Estimated number of members | CAT fees paid annually | Total recovery |
|---|---|---|---|---|
| Industry Members | Tier 1 | 8 | $404,016 | $3,232,128 |
| | Tier 2 | 41 | 324,612 | 13,309,092 |
| | Tier 3 | 35 | 230,868 | 8,080,380 |
| | Tier 4 | 75 | 79,860 | 5,989,500 |
| | Tier 5 | 59 | 49,956 | 2,947,404 |
| | Tier 6 | 65 | 30,720 | 1,996,800 |
| | Tier 7 | 285 | 6,012 | 1,713,420 |
| | Tier 8 | 328 | 1,740 | 570,720 |
| | Tier 9 | 735 | 264 | 194,040 |
| Total | | 1,631 | | 38,033,484 |
| Equity Execution Venues | Tier 1 | 13 | 253,500 | 3,295,500 |
| | Tier 2 | 40 | 155,280 | 6,211,200 |
| Total | | 53 | | 9,506,700 |
| Options Execution Venues | Tier 1 | 11 | 230,460 | 2,535,060 |
| | Tier 2 | 4 | 158,448 | 633,792 |
| Total | | 15 | | 3,168,852 |
| Total | | | | 50,709,036 |
| Excess [49] | | | | 9,036 |

(F) Comparability of Fees

The funding principles require a funding model in which the fees charged to the CAT Reporters with the most CAT-related activity (measured by market share and/or message traffic, as applicable) are generally comparable (where, for these comparability purposes, the tiered fee structure takes into consideration affiliations between or among CAT Reporters, whether Execution Venue and/or Industry Members). Accordingly, in creating the model, the Operating Committee sought to take account of the affiliations between or among CAT Reporters—that is, where affiliated entities may have multiple Industry Member and/or Execution Venue licenses, by maintaining relative comparability of fees among such affiliations with the most expected CAT-related activity. To do this, the Participants identified representative affiliations in the largest tier of both Execution Venues and Industry Members and compared the aggregate fees that would be paid by such firms.

While the proposed fees for Tier 1 and Tier 2 Industry Members are relatively higher than those of Tier 1 and Tier 2 Execution Venues, Execution Venue complex fees are relatively higher than those of Industry Member complexes largely due to affiliations between Execution Venues. The tables set forth below describe the largest Execution Venue and Industry Member complexes and their associated fees: [50]

[49] The amount in excess of the total CAT costs will contribute to the gradual accumulation of the target operating reserve of $11.425 million.

[50] Note that the analysis of the complexes was performed on a best efforts basis, as all affiliations between the 1631 Industry Members may not be included.

EXECUTION VENUE COMPLEXES

| Execution Venue complex | Listing of Equity Execution Venue tiers | Listing of Options Execution Venue tier | Total fees by EV complex |
|---|---|---|---|
| Execution Venue Complex 1 | • Tier 1 (x2)<br>• Tier 2 (x1) | • Tier 1 (x4)<br>• Tier 2 (x2). | $1,900,962 |
| Execution Venue Complex 2 | • Tier 1 (x2) | • Tier 1 (x2)<br>• Tier 2 (x1). | 1,863,801 |
| Execution Venue Complex 3 | • Tier 1 (x2)<br>• Tier 2 (x2). | • Tier 1 (x2) | 1,278,447 |

INDUSTRY MEMBER COMPLEXES

| Industry Member complex | Listing of Industry Member tiers | Listing of ATS tiers | Total fees by IM complex |
|---|---|---|---|
| Industry Member Complex 1 | • Tier 1 (x2) | • Tier 2 (x1) | $963,300 |
| Industry Member Complex 2 | • Tier 1 (x1)<br>• Tier 4 (x1). | • Tier 2 (x3) | 949,674 |
| Industry Member Complex 3 | • Tier 1 (x1)<br>• Tier 2 (x1). | • Tier 2 (x1) | 883,888 |
| Industry Member Complex 4 | • Tier 1 (x1)<br>• Tier 2 (x1).<br>• Tier 4 (x1). | • N/A | 808,472 |
| Industry Member Complex 5 | • Tier 2 (x1)<br>• Tier 3 (x1).<br>• Tier 4 (x1).<br>• Tier 7 (x1). | • Tier 2 (x1) | 796,595 |

(G) Billing Onset

Under Section 11.1(c) of the CAT NMS Plan, to fund the development and implementation of the CAT, the Company shall time the imposition and collection of all fees on Participants and Industry Members in a manner reasonably related to the timing when the Company expects to incur such development and implementation costs. The Company is currently incurring such development and implementation costs and will continue to do so prior to the commencement of CAT reporting and thereafter. For example, the Plan Processor has required up-front payments to begin building the CAT. In addition, the Company continues to incur consultant and legal expenses on an on-going basis to implement the CAT. Accordingly, the Operating Committee determined that all CAT Reporters, including both Industry Members and Execution Venues (including Participants), would begin to be invoiced as promptly as possible following the establishment of a billing mechanism. Bats will issue a Regulatory Circular to its members when the billing mechanism is established, specifying the date when such invoicing of Industry Members will commence.

(H) Changes to Fee Levels and Tiers

Section 11.3(d) of the CAT NMS Plan states that ''[t]he Operating Committee shall review such fee schedule on at least an annual basis and shall make any changes to such fee schedule that it deems appropriate. The Operating Committee is authorized to review such fee schedule on a more regular basis, but shall not make any changes on more than a semi-annual basis unless, pursuant to a Supermajority Vote, the Operating Committee concludes that such change is necessary for the adequate funding of the Company.'' With such reviews, the Operating Committee will review the distribution of Industry Members and Execution Venues across tiers, and make any updates to the percentage of CAT Reporters allocated to each tier as may be necessary. In addition, the reviews will evaluate the estimated ongoing CAT costs and the level of the operating reserve. To the extent that the total CAT costs decrease, the fees would be adjusted downward, and, to the extent that the total CAT costs increase, the fees would be adjusted upward.[51] Furthermore, any surplus of the Company's revenues over its expenses is to be included within the operational reserve to offset future fees. The limitations on more frequent changes to the fee, however, are intended to provide budgeting certainty for the CAT Reporters and the Company.[52] To the extent that the Operating Committee approves changes to the number of tiers in the funding model or the fees assigned to each tier, then Bats will file such changes with the SEC pursuant to Section 19(b) of the Exchange Act, and any such changes will become effective in accordance with the requirements of Section 19(b).

(I) Initial and Periodic Tier Reassignments

The Operating Committee has determined to calculate fee tiers every three months based on market share or message traffic, as applicable, from the prior three months. For the initial tier assignments, the Company will calculate the relevant tier for each CAT Reporter using the three months of data prior to the commencement date. As with the initial tier assignment, for the tri-monthly reassignments, the Company will calculate the relevant tier using the three months of data prior to the relevant tri-monthly date. Bats notes that any movement of CAT Reporters between tiers will not change the criteria for each tier or the fee amount corresponding to each tier.

In performing the tri-monthly reassignments, Bats notes that the percentage of CAT Reporters in each assigned tier is relative. Therefore, a CAT Reporter's assigned tier will

[51] The CAT Fees are designed to recover the costs associated with the CAT. Accordingly, CAT Fees would not be affected by increases or decreases in other non-CAT expenses incurred by the SROs, such as any changes in costs related to the retirement of existing regulatory systems, such as OATS.

[52] Section B.7, Appendix C of the CAT NMS Plan, Approval Order at 85006.

depend, not only on its own message traffic or market share, but it also will depend on the message traffic/market share across all CAT Reporters. For example, the percentage of Industry Members (other than Execution Venue ATSs) in each tier is relative such that such Industry Member's assigned tier will depend on message traffic generated across all CAT Reporters as well as the total number of CAT Reporters. The Operating Committee will inform CAT Reporters of their assigned tier every three months following the periodic tiering process, as the funding model will compare an individual CAT Reporter's activity to that of other CAT Reporters in the marketplace.

The following demonstrates a tier reassignment. In accordance with the funding model, the top 75% of Options Execution Venues in market share are categorized as Tier 1 while the bottom 25% of Options Execution Venues in market share are categorized as Tier 2. In the sample scenario below, Options Execution Venue L is initially categorized as a Tier 2 Options Execution Venue in Period A due to its market share. When market share is recalculated for Period B, the market share of Execution Venue L increases, and it is therefore subsequently reranked and reassigned to Tier 1 in Period B. Correspondingly, Options Execution Venue K, initially a Tier 1 Options Execution Venue in Period A, is reassigned to Tier 2 in Period B due to decreases in its market share of share volume.

| Period A | | | Period B | | |
|---|---|---|---|---|---|
| Options Execution Venue | Market share rank | Tier | Options Execution Venue | Market share rank | Tier |
| Options Execution Venue A | 1 | 1 | Options Execution Venue A | 1 | 1 |
| Options Execution Venue B | 2 | 1 | Options Execution Venue B | 2 | 1 |
| Options Execution Venue C | 3 | 1 | Options Execution Venue C | 3 | 1 |
| Options Execution Venue D | 4 | 1 | Options Execution Venue D | 4 | 1 |
| Options Execution Venue E | 5 | 1 | Options Execution Venue E | 5 | 1 |
| Options Execution Venue F | 6 | 1 | Options Execution Venue F | 6 | 1 |
| Options Execution Venue G | 7 | 1 | Options Execution Venue I | 7 | 1 |
| Options Execution Venue H | 8 | 1 | Options Execution Venue H | 8 | 1 |
| Options Execution Venue I | 9 | 1 | Options Execution Venue G | 9 | 1 |
| Options Execution Venue J | 10 | 1 | Options Execution Venue J | 10 | 1 |
| Options Execution Venue K | 11 | 1 | Options Execution Venue L | 11 | 1 |
| Options Execution Venue L | 12 | 2 | Options Execution Venue K | 12 | 2 |
| Options Execution Venue M | 13 | 2 | Options Execution Venue N | 13 | 2 |
| Options Execution Venue N | 14 | 2 | Options Execution Venue M | 14 | 2 |
| Options Execution Venue O | 15 | 2 | Options Execution Venue O | 15 | 2 |

(3) Proposed CAT Fee Schedule

Bats proposes the Consolidated Audit Trail Funding Fees to implement the CAT Fees determined by the Operating Committee on SRO's Industry Members. The proposed fee schedule has three sections, covering definitions, the fee schedule for CAT Fees, and the timing and manner of payments. Each of these sections is discussed in detail below.

(A) Definitions

Paragraph (a) of the proposed fee schedule sets forth the definitions for the proposed fee schedule. Paragraph (a)(1) states that, for purposes of the Consolidated Audit Trail Funding Fees, the terms ''CAT NMS Plan,'' ''Industry Member,'' ''NMS Stock,'' ''OTC Equity Security'', and ''Participant'' are defined as set forth in Rule 4.5 (Consolidated Audit Trail—Definitions).

The proposed fee schedule imposes different fees on Equity ATSs and Industry Members that are not Equity ATSs. Accordingly, the proposed fee schedule defines the term ''Equity ATS.'' First, paragraph (a)(2) defines an ''ATS'' to mean an alternative trading system as defined in Rule 300(a) of Regulation ATS under the Securities Exchange Act of 1934, as amended, that operates pursuant to Rule 301 of Regulation ATS. This is the same definition of an ATS as set forth in Section 1.1 of the CAT NMS Plan in the definition of an ''Execution Venue.'' Then, paragraph (a)(4) defines an ''Equity ATS'' as an ATS that executes transactions in NMS Stocks and/or OTC Equity Securities.

Paragraph (a)(3) of the proposed fee schedule defines the term ''CAT Fee'' to mean the Consolidated Audit Trail Funding Fee(s) to be paid by Industry Members as set forth in paragraph (b) in the proposed fee schedule.

Finally, Paragraph (a)(6) defines an ''Execution Venue'' as a Participant or an ATS (excluding any such ATS that does not execute orders). This definition is the same substantive definition as set forth in Section 1.1 of the CAT NMS Plan. Paragraph (a)(5) defines an ''Equity Execution Venue'' as an Execution Venue that trades NMS Stocks and/or OTC Equity Securities.

(B) Fee Schedule

Bats proposes to impose the CAT Fees applicable to its Industry Members through paragraph (b) of the proposed fee schedule. Paragraph (b)(1) of the proposed fee schedule sets forth the CAT Fees applicable to Industry Members other than Equity ATSs. Specifically, paragraph (b)(1) states that the Company will assign each Industry Member (other than an Equity ATS) to a fee tier once every quarter, where such tier assignment is calculated by ranking each Industry Member based on its total message traffic for the three months prior to the quarterly tier calculation day and assigning each Industry Member to a tier based on that ranking and predefined Industry Member percentages. The Industry Members with the highest total quarterly message traffic will be ranked in Tier 1, and the Industry Members with lowest quarterly message traffic will be ranked in Tier 9. Each quarter, each Industry Member (other than an Equity ATS) shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Industry Member for that quarter:

| Tier | Percentage of industry members | Quarterly CAT fee |
|---|---|---|
| 1 | 0.500 | $101,004 |
| 2 | 2.500 | 81,153 |
| 3 | 2.125 | 57,717 |
| 4 | 4.625 | 19,965 |
| 5 | 3.625 | 12,489 |
| 6 | 4.000 | 7,680 |
| 7 | 17.500 | 1,503 |
| 8 | 20.125 | 435 |

| Tier | Percentage of industry members | Quarterly CAT fee |
|---|---|---|
| 9 ..... | 45.000 | 66 |

Paragraph (b)(2) of the proposed fee schedule sets forth the CAT Fees applicable to Equity ATSs.[53] These are the same fees that Participants that trade NMS Stocks and/or OTC Equity Securities will pay. Specifically, paragraph (b)(2) states that the Company will assign each Equity ATS to a fee tier once every quarter, where such tier assignment is calculated by ranking each Equity Execution Venue based on its total market share of NMS Stocks and OTC Equity Securities for the three months prior to the quarterly tier calculation day and assigning each Equity Execution Venue to a tier based on that ranking and predefined Equity Execution Venue percentages. The Equity Execution Venues with the higher total quarterly market share will be ranked in Tier 1, and the Equity Execution Venues with the lower quarterly market share will be ranked in Tier 2. Specifically, paragraph (b)(2) states that, each quarter, each Equity ATS shall pay the following CAT Fee corresponding to the tier assigned by the Company for such Equity ATS for that quarter:

| Tier | Percentage of Equity Execution Venues | Quarterly CAT fee |
|---|---|---|
| 1 ..... | 25.00 | $63,375 |
| 2 ..... | 75.00 | 38,820 |

(C) Timing and Manner of Payment

Section 11.4 of the CAT NMS Plan states that the Operating Committee shall establish a system for the collection of fees authorized under the CAT NMS Plan. The Operating Committee may include such collection responsibility as a function of the Plan Processor or another administrator. To implement the payment process to be adopted by the Operating Committee, paragraph (c)(1) of the proposed fee schedule states that the Company will provide each Industry Member with one invoice each quarter for its CAT Fees as determined pursuant to paragraph (b) of the proposed fee schedule, regardless of whether the Industry Member is a member of multiple self-regulatory organizations. Paragraph (c)(1) further states that each Industry Member will pay its CAT Fees to the Company via the centralized system for the collection of CAT Fees established by the Company in the manner prescribed by the Company. Bats will provide Industry Members with details regarding the manner of payment of CAT Fees by Regulatory Circular.

Although the exact fee collection system and processes for CAT fees has not yet been established, all CAT fees will be billed and collected centrally through the Company, via the Plan Processor or otherwise. Although each Participant will adopt its own fee schedule regarding CAT Fees, no CAT Fees or portion thereof will be collected by the individual Participants. Each Industry Member will receive from the Company one invoice for its applicable CAT fees, not separate invoices from each Participant of which it is a member. The Industry Members will pay the CAT Fees to the Company via the centralized system for the collection of CAT fees established by the Company.[54]

Section 11.4 of the CAT NMS Plan also states that Participants shall require each Industry Member to pay all applicable authorized CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). Section 11.4 further states that, if an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law. Therefore, in accordance with Section 11.4 of the CAT NMS Plan, Bats proposes to adopt paragraph (c)(2) of the proposed fee schedule. Paragraph (c)(2) of the proposed fee schedule states that each Industry Member shall pay CAT Fees within thirty days after receipt of an invoice or other notice indicating payment is due (unless a longer payment period is otherwise indicated). If an Industry Member fails to pay any such fee when due, such Industry Member shall pay interest on the outstanding balance from such due date until such fee is paid at a per annum rate equal to the lesser of: (i) The Prime Rate plus 300 basis points; or (ii) the maximum rate permitted by applicable law.

2. Statutory Basis

Bats believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[55] which require, among other things, that the SRO rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and not designed to permit unfair discrimination between customers, issuers, brokers and dealers, and Section 6(b)(4) of the Act,[56] which requires that SRO rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities. As discussed above, the SEC approved the bifurcated, tiered, fixed fee funding model in the CAT NMS Plan, finding it was reasonable and that it equitably allocated fees among Participants and Industry Members. Bats believes that the proposed tiered fees adopted pursuant to the funding model approved by the SEC in the CAT NMS Plan are reasonable, equitably allocated and not unfairly discriminatory.

Bats believes that this proposal is consistent with the Act because it implements, interprets or clarifies the provisions of the Plan, and is designed to assist Bats and its Industry Members in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [57] To the extent that this proposal implements, interprets or clarifies the Plan and applies specific requirements to Industry Members, Bats believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

Bats believes that the proposed tiered fees are reasonable. First, the total CAT Fees to be collected would be directly associated with the costs of establishing and maintaining the CAT, where such costs include Plan Processor costs and costs related to insurance, third party services and the operational reserve. The CAT Fees would not cover Participant services unrelated to the CAT. In addition, any surplus CAT Fees cannot be distributed to the individual Participants; such surpluses must be used as a reserve to offset future fees. Given the direct relationship between the fees and the CAT costs, Bats believes

[53] Note that no fee schedule is provided for Execution Venue ATSs that execute transactions in Listed Options, as no such Execution Venue ATSs currently exist due trading restrictions related to Listed Options.

[54] Section 11.4 of the CAT NMS Plan.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78f(b)(4).

[57] Approval Order at 84697.

that the total level of the CAT Fees is reasonable.

In addition, Bats believes that the proposed CAT Fees are reasonably designed to allocate the total costs of the CAT equitably between and among the Participants and Industry Members, and are therefore not unfairly discriminatory. As discussed in detail above, the proposed tiered fees impose comparable fees on similarly situated CAT Reporters. For example, those with a larger impact on the CAT (measured via message traffic or market share) pay higher fees, whereas CAT Reporters with a smaller impact pay lower fees. Correspondingly, the tiered structure lessens the impact on smaller CAT Reporters by imposing smaller fees on those CAT Reporters with less market share or message traffic. In addition, the funding model takes into consideration affiliations between CAT Reporters, imposing comparable fees on such affiliated entities.

Moreover, Bats believes that the division of the total CAT costs between Industry Members and Execution Venues, and the division of the Execution Venue portion of total costs between Equity and Options Execution Venues, is reasonably designed to allocate CAT costs among CAT Reporters. The 75/25 division between Industry Members and Execution Venues maintains the greatest level of comparability across the funding model, keeping in view that comparability should consider affiliations among or between CAT Reporters (*e.g.,* firms with multiple Industry Members or exchange licenses). Similarly, the 75/25 division between Equity and Options Execution Venues maintains elasticity across the funding model as well as the greatest level of fee equitability and comparability based on the current number of Equity and Options Execution Venues.

Finally, Bats believes that the proposed fees are reasonable because they would provide ease of calculation, ease of billing and other administrative functions, and predictability of a fixed fee. Such factors are crucial to estimating a reliable revenue stream for the Company and for permitting CAT Reporters to reasonably predict their payment obligations for budgeting purposes.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Act [58] require that SRO rules not impose any burden on competition that is not necessary or appropriate. Bats does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Bats notes that the proposed rule change implements provisions of the CAT NMS Plan approved by the Commission, and is designed to assist Bats in meeting its regulatory obligations pursuant to the Plan. Similarly, all national securities exchanges and FINRA are proposing this proposed fee schedule to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive fee filing and, therefore, it does not raise competition issues between and among the exchanges and FINRA.

Moreover, as previously described, Bats believes that the proposed rule change fairly and equitably allocates costs among CAT Reporters. In particular, the proposed fee schedule is structured to impose comparable fees on similarly situated CAT Reporters, and lessen the impact on smaller CAT Reporters. CAT Reporters with similar levels of CAT activity will pay similar fees. For example, Industry Members (other than Execution Venue ATSs) with higher levels of message traffic will pay higher fees, and those with lower levels of message traffic will pay lower fees. Similarly, Execution Venue ATSs and other Execution Venues with larger market share will pay higher fees, and those with lower levels of market share will pay lower fees. Therefore, given that there is generally a relationship between message traffic and market share to the CAT Reporter's size, smaller CAT Reporters generally pay less than larger CAT Reporters. Accordingly, Bats does not believe that the CAT Fees would have a disproportionate effect on smaller or larger CAT Reporters. In addition, ATSs and exchanges will pay the same fees based on market share. Therefore, Bats does not believe that the fees will impose any burden on the competition between ATSs and exchanges. Accordingly, Bats believes that the proposed fees will minimize the potential for adverse effects on competition between CAT Reporters in the market.

Furthermore, the tiered, fixed fee funding model limits the disincentives to providing liquidity to the market. Therefore, the proposed fees are structured to limit burdens on competitive quoting and other liquidity provision in the market.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [59] and paragraph (f) of Rule 19b–4 thereunder.[60] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2017–11 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBYX–2017–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[58] 15 U.S.C. 78f(b)(8).

[59] 15 U.S.C. 78s(b)(3)(A).

[60] 17 CFR 240.19b–4(f).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2017–11 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11504 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80807; File No. SR–NYSE–2017–21]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules 5220 and 9560 and Amend Rule 8313

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2017, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) a new Rule 5220 that defines and prohibits two types of disruptive quoting and trading activity on the Exchange; (2) a new Rule 9560 governing supplemental expedited suspension proceedings; and (3) amendments to Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes (1) a new Rule 5220 that defines and prohibits two types of disruptive quoting and trading activity on the Exchange; (2) a new Rule 9560 governing supplemental expedited suspension proceedings; and (3) amendments to Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560.

The proposed rule change is based on rules recently adopted by Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (''BATS''), and The Nasdaq Stock Market LLC (''NASDAQ'').[3] The proposed rules are the same as those adopted by BATS and NASDAQ, with the following exceptions discussed below: (1) Conforming references to reflect the Exchange's membership; and (2) the call for review process in proposed Rule 9560(f). The Exchange believes that having consistent rules for issuing a cease and desist order on an expedited basis as other self-regulatory organizations (''SROs'') to halt certain disruptive and manipulative quoting and trading activity would enhance the Exchange's ability to protect investors and market integrity.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its member organizations and persons associated with its member organizations, with the Act, the rules and regulations thereunder, and the Exchange's Rules.[4] Further, the Exchange's Rules are required to be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest.'' [5]

In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity operated directly by Exchange staff. When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange conducts an investigation into the activity and requests documents and information. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules are identified, the Exchange will commence disciplinary proceedings, which could result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and

[61] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. *See* Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (SR–BATS–2015–101) (''BATS Approval Order''); *see also* Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (SR–BatsEDGA–2016–03) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (SR–BatsBYX–2016–03) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (SR–BatsEDGX–2016–04) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, NASDAQ filed a substantially similar proposed rule change with the SEC for immediate effectiveness. *See* Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR–NASDAQ–2016–074). NASDAQ has also extended the rule to other exchanges. *See, e.g.,* Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR–NASDAQ–2016–092). Similarly, the Financial Industry Regulatory Authority, Inc. (''FINRA'') also recently prohibited disruptive quoting and trading and amended its procedural rules. *See* Securities Exchange Act Release No. 76361 (November 21, 2016), 81 FR 85650 (November 28, 2016) (SR–FINRA–2016–043).

[4] 15 U.S.C. 78f(b)(1).

[5] 15 U.S.C. 78f(b)(1).

potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period sometimes is necessary and appropriate to afford adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange. In recent years, several cases have been brought and resolved by the Exchange and other SROs involving allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering [6] or spoofing.[7]

The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, the parties responsible for such conduct or responsible for their customers' conduct continued the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. To supplement other Exchange Rules on which it may already rely to stop such activity from continuing, the Exchange believes that it should have additional authority to initiate expedited suspension proceedings in order to stop behavior from continuing on the Exchange if a member organization or a person associated with its member organization is engaging in or facilitating disruptive quoting and trading activity and the member organization or associated person has received sufficient notice with an opportunity to respond, but such activity has not ceased. The following examples involving the Exchange and its affiliate NYSE Arca, Inc. (''NYSE Arca''), are instructive regarding the rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (''Biremis'') and its CEO were barred from the securities industry for, among other things, supervisory violations related to a failure by Biremis to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[8] Biremis' sole business was providing trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by Biremis to U.S. markets originated directly or indirectly from its foreign clients. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although Biremis and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, Biremis took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (''Hold Brothers'') settled a regulatory action in connection with its provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[9] Many traders using the firm's services were located in foreign jurisdictions. Hold Brothers ultimately settled the action with FINRA and several exchanges, including NYSE Arca, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[10] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, Hold Brothers also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. Hold Brothers was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years. The Exchange also notes that criminal proceedings were initiated against Navinder Singh Sarao for manipulative trading activity, including forms of layering and spoofing in the futures markets, that were identified as a contributing factor to the ''Flash Crash'' of 2010, and yet continued through 2015. In November 2016, Mr. Sarao pled guilty to one count each of wire fraud and spoofing.[11]

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

## Proposed Rule Change

### Proposed Rule 5220

The Exchange proposes to adopt new Rule 5220 of the Exchange's Conduct Rules to define and prohibit disruptive quoting and trading activity on the Exchange. Proposed Rule 5220(a) would prohibit member organizations and covered persons [12] from engaging in or

[6] ''Layering'' can include a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[7] ''Spoofing'' can include a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[8] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[9] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[10] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

[11] The plea agreement in *United States* v. *Navinder Singh Sarao,* Docket Number: 1:15–CR–00075–1 (N.D. Ill.), is available at *https://www.justice.gov/criminal-fraud/file/910196/download.*

[12] Rule 9120(g) defines ''covered person'' to include a member, principal executive, approved person, registered or nonregistered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange. Rule 2(b) defines ''member organization'' as a registered broker or dealer (unless exempt pursuant to the Act) that is a

Continued

facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 5220(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons. The Exchange proposes to adopt Rule 5220(b)(1) and (2) providing additional details regarding disruptive quoting and trading activity. Proposed Rule 5220(b)(1) would describe disruptive quoting and trading activity containing many of the elements indicative of layering. For purposes of the proposed Rule, disruptive quoting and trading activity would include a frequent pattern in which the following facts are present:

- A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders'') (proposed Rule 5220(b)(1)(A)); and
- following the entry of the Displayed Orders, the level of supply and demand for the security changes (proposed Rule 5220(b)(1)(B)); and
- the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed (proposed Rule 5220(b)(1)(C)); and
- following the execution of the Contra-Side Orders, the party cancels the Displayed Orders (proposed Rule 5220(b)(1)(D)).

Proposed Rule 5220(b)(2) would describe disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present:

- A party narrows the spread for a security by placing an order inside the national best bid or offer (proposed Rule 5220(b)(2)(A)); and
- the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(2)(A) that narrowed the spread (proposed Rule 5220(b)(2)(B)).

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above and with the rules of other SROs.[13]

Proposed Rule 5220(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 5220(b)(1)(A)–(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues.

Proposed Rule 9560

Proposed Rule 9560 would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or covered person from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a member organization or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity.

Under proposed paragraph (a)(1) of Rule 9560, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Exchange's Enforcement department may initiate an expedited suspension proceeding with respect to alleged violations of proposed Rule 5220. Proposed paragraph (a) would also set forth the requirements for notice ((a)(2)) and service of such notice ((a)(3)) pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 9560 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with current Rule 9231(b), which governs the appointment of a hearing panel or extended hearing panel to conduct disciplinary proceedings. The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules [sic] 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9560, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c)(1) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.

Under paragraph (c)(2) of the proposed Rule, a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Under the proposed Rule, service

member of FINRA or another registered securities exchange.

[13] *See, e.g.,* BATS Rule 12.15; NASDAQ Rule 2170. *See generally* note 4, *supra.*

shall be made by personal service or overnight commercial courier and shall be effective upon service.

Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers ((c)(3), witnesses ((c)(4)), additional information that may be required by the Hearing Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed paragraph (c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d)(1) of the proposed Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d)(2) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 5220, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of proposed Rule 5220 ((d)(2)(A)). Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order ((d)(2)(B)). The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from ((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)).

As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below.

Finally, paragraph (d)(4) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 9560 would provide that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 9560 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed paragraph (f) would describe the call for review process by the Exchange Board of Directors. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with Rule 9310 (Review by Exchange Board of Directors), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

Finally, proposed paragraph (g) would provide that sanctions issued under the proposed Rule 9560 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Proposed Amendments to Rule 8313

Finally, the Exchange proposes amendments to Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560. Specifically, the Exchange proposes to amend Rule 8313(a)(3), which provides that the Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant various Exchange Rules, to include a reference to proposed Rule 9560. The Exchange also proposes to include a notice of the initiation of a suspension proceeding served pursuant to proposed Rule 9560 in the definition of ''disciplinary complaint'' under Rule 8313(e)(1). Similarly, the Exchange would include suspension orders issued pursuant to proposed Rule 9560 in the definition of ''disciplinary decision'' under Rule 8313(e)(2). The proposed amendments to Rule 8313 are consistent with the FINRA Rule 8313 and the rules of the other SROs modeled on FINRA Rule 8313.[14]

* * * * *

In summary, proposed Rule 5220, coupled with proposed Rule 9560, would provide the Exchange with another form and means of authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. The following example illustrates how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation, the Exchange would contact the member organization or covered person responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information,

[14] *See* FINRA Rule 8313; BATS Rule 8.18.

including the source of the activity. If the Exchange were to continue to see the same pattern from the same member organization or covered person and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the member organization or covered person that would include details regarding the alleged violations as well as the proposed sanction.

In such a case the proposed sanction would likely be to order the member organization or covered person to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such member organization or covered person unless and until such action is taken. The member organization or covered person would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding. If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the member organization or covered person to cease providing access to the client at issue and suspending such Member unless and until such action is taken.

If such member organization or covered person wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such member organization or covered person could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the member or member organization pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a member organization or covered person in the event that such member organization or covered person is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent matters such as the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have this supplemental authority to promptly initiate expedited suspension proceedings against any member organization or covered person who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such member organization or covered person to terminate access to the Exchange to one or more clients that are [sic] responsible for the violative activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of proposed Rules [sic] 5220, when necessary to protect investors, other member organizations or covered persons, and the Exchange.

Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity. Notwithstanding the adoption of the proposed rules along with existing disciplinary rules in the 9000 series, the Exchange also notes that that pursuant to Rule 9555(a)(2) (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), if a member organization or covered person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of proposed Rule 5220 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[17] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed.

As noted throughout this filing, the Exchange believes that these rule proposals are necessary for the

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78f(b)(5).

protection of investors rather than allowing disruptive quoting and trading activity to occur for several years. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[18] The Exchange believes that this proposal will provide the Exchange with additional means to enforce against such behavior in an expedited manner while providing member organizations or covered person with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest from such ongoing behavior.

The Exchange believes that the proposal is also consistent with Section 6(b)(7) of the Act,[19] which requires that the rules of an exchange ''provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.'' Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[20] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 9560. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other member organizations or covered persons and the Exchange, and even in such cases, respondents will be afforded due process in connection with the suspension proceedings.

Finally, the Exchange believes that amending Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560 furthers the objectives of Section 6(b)(5) of the Act[21] by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. The Exchange also believes that the proposed rule change promotes greater transparency to the Exchange's disciplinary process by providing greater access to information regarding its disciplinary actions and valuable guidance and information to persons subject to the Exchange's jurisdiction, regulators, and the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic] market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other member organizations or covered persons, and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct. The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing member organizations or covered persons with the necessary due process. Finally, the proposed rule change is designed to enhance the Exchange's rules governing the release of disciplinary complaints, decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[18] *See* Section 3 herein, the Purpose section, for examples of conduct referred to herein.

[19] 15 U.S.C. 78f(b)(7).

[20] 15 U.S.C. 78f(d)(1).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] 15 U.S.C. 78s(b)(2)(B).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2017–21 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2017–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2017–21 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11502 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[27] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80805; File No. SR–FINRA–2017–015]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Amend FINRA Rule 7730 To Make Available a New End-of-Day TRACE Transaction File

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2017, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 7730 to make available a new End-of-Day TRACE Transaction File.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Rule 7730 (Trade Reporting and Compliance Engine (TRACE)), among other things, sets forth the TRACE data products offered by FINRA in connection with TRACE-Eligible Securities.[3] FINRA is proposing to amend Rule 7730 to make available a new End-of-Day TRACE Transaction File to provide interested parties with a simpler means of receiving all of the transaction information disseminated each trading day as part of Real-Time TRACE transaction data.[4]

The data elements to be included in the proposed End-of-Day TRACE Transaction File would be the same as those disseminated in Real-Time TRACE transaction data, and the proposed End-of-Day TRACE Transaction File would be separately available for each data set for which Real-Time TRACE transaction data is available (*i.e.,* the Corporate Bond Data Set, Agency Data Set, SP Data Set, and Rule 144A Data Set). Subscribers to the End-of-Day TRACE Transaction File would access the product daily after the TRACE system closes.[5]

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.* The effective date will be no later than 365 days following SEC approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 6710 (Definitions) provides that a ''TRACE-Eligible Security'' is a debt security that is United States (''U.S.'') dollar-denominated and issued by a U.S. or foreign private issuer, and, if a ''restricted security'' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A; or is a debt security that is U.S. dollar-denominated and issued or guaranteed by an Agency as defined in paragraph (k) or a Government-Sponsored Enterprise as defined in paragraph (n); or a U.S. Treasury Security as defined in paragraph (p). ''TRACE-Eligible Security'' does not include a debt security that is issued by a foreign sovereign or a Money Market Instrument as defined in paragraph (o).

[4] FINRA currently makes available a Real-Time TRACE transaction data product, which provides subscribers with access to all disseminated transactions as they are reported throughout the trading day. Real-time data is delivered via a NASDAQ Multicast feed. To receive the feed, firms must connect either directly to NASDAQ, via an extranet connection, or through a retransmission vendor. Some market participants have indicated that a simpler alternative that allows them to receive transaction information once a day in an end-of-day file would be useful.

[5] FINRA intends to establish a fee for the End-of-Day TRACE Transaction File prior to the effective date of the instant proposed rule change. The fee will be established pursuant to a separate rule filing.

[6] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.

Pursuant to the proposal, FINRA would make available to subscribers an optional End-of-Day TRACE Transaction File that would include all transaction data disseminated that day as part of Real-Time TRACE transaction data for TRACE-Eligible Securities. FINRA believes that the proposed End-of-Day TRACE Transaction File provides a simpler alternative to the Real-Time TRACE transaction data product, which provides transparency information on the price and size of transactions in TRACE-Eligible Securities, and may be useful to interested parties that do not require intra-day, real-time transaction data on TRACE-Eligible Securities. Thus, FINRA believes that the proposed rule change is in the public interest and consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Economic Impact Analysis

FINRA's existing Real-Time TRACE data product provides transaction data for the following Data Sets: Corporate Bond Data Set, Agency Data Set, SP Data Set, and Rule 144A Data Set. As detailed above, FINRA is proposing to create an End-of-Day TRACE Transaction File that would include all transaction data disseminated that day as part of Real-Time TRACE transaction data, and would be separately available for each data set for which Real-Time TRACE transaction data is available. The proposal to create an End-of-Day TRACE Transaction File would not impose any additional reporting requirements or costs on firms, and the purchase of TRACE data products would continue to be optional for market participants and others and, as a result, would have no direct impact on firms.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2017–015 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2017–015. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2017–015 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11500 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80811; File No. SR–Phlx–2017–43]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2017, NASDAQ PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Rule 3400 series relating to the Order Audit Trail System, Rule 785 relating to Electronic Blue Sheets, Rule 1022 relating to account identification, and Rule 1063 and Option Floor Procedure Advices and Order and Decorum Regulations C–2 relating to the Consolidated Options Audit Trail System to reflect changes to these rules once members are effectively reporting to the Consolidated Audit Trail (''CAT'') and the CAT's accuracy and reliability meets certain standards as described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Rule 3400 series relating to the Order Audit Trail System (''OATS''), Rule 785 relating to Electronic Blue Sheets (''EBS''), Rule 1022 relating to account identification, and Rule 1063 Option Floor Procedure Advices and Order and Decorum Regulations C–2 relating to the Consolidated Options Audit Trail System (''COATS'') to reflect changes to these rules once members are effectively reporting to the CAT, and the CAT's accuracy and reliability meets certain standards as described below.[3]

Background

Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act[4] and Rule 608 of Regulation NMS thereunder,[5] the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[6] The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[7] The Plan was published for comment in the **Federal Register** on May 17, 2016,[8] and approved by the Commission, as modified, on November 15, 2016.[9] On March 15, 2017, the Commission approved the new Phlx Rule 900A Series to implement provisions of the CAT NMS Plan that are applicable to Phlx members.[10]

The CAT NMS Plan is designed to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.'' [11] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [12] Finally, the Plan requires the rule filing to discuss the following:

(i) Specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

(ii) whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.[13]

Changes to OATS

In response to these requirements, Phlx is proposing to delete the Rule 3400 Series (the ''OATS Rules'') from the Phlx rulebook once the CAT achieves the specific accuracy and reliability standards described below, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations,[14] and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.[15]

Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is ''specific accuracy and reliability

[3] The Exchange initially filed the proposed rule change on May 15, 2017 (SR–Phlx–2017–38). On May 26, 2017, the Exchange withdrew that filing and submitted this filing.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[7] 17 CFR 242.613.

[8] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[9] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[10] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–Phlx–2017–07).

[11] CAT NMS Plan, Appendix C, Section C.9.

[12] *See id.*

[13] *See id.*

[14] As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants ''worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.'' *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they ''will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' *Id.*

[15] Phlx notes that the OATS Rules were originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the National Association of Securities Dealers, Inc. for failure to adequately enforce its rules. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998). In approving the OATS Rules, the Commission concluded that OATS satisfied the conditions of the SEC's order and was consistent with the Exchange Act. *See id.* at 12566–67.

standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [16] Phlx believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired and requests for trading information can be amended to account for information being available in the CAT.

As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (*i.e.,* data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that ''error rates after reprocessing of error corrections will be de minimis.'' [17] The Participants based this Error Rate on their consideration of ''current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.'' [18]

Phlx agrees with the Participants' conclusion that a 5% pre-correction threshold ''strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible.'' [19] However, Phlx believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by Phlx to conduct surveillance. Although Phlx is proposing to measure the appropriate error rates in the aggregate, rather than firm-by-firm, Phlx believes that the error rates for equity securities should be measured separately from options since options orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, Phlx is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).[20] Phlx is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

Phlx is proposing to use error rates in each the following categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met:

• *Rejection Rates and Data Validations.* Data validations for the CAT, while not expected to be designed the same as OATS, must be functionally equivalent to OATS in accordance with the CAT NMS Plan (*i.e.,* the same types of basic data validations must be performed by the Plan Processor to comply with the CAT NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations [21] and syntax and context checks be performed on all submitted records.[22] If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.[23] The specific validations can be determined only after the Plan Processor has finalized the Industry Member Technical Specifications; however, the Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.[24] Phlx is proposing that, over the 180-day period, aggregate rejection rates (measured separately for equities and options) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.

• *Intra-Firm Linkages.* The Plan requires that ''the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order.'' [25] At a minimum, this requirement includes the creation of an order lifecycle between ''[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS).'' [26] Phlx is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.

• *Inter-Firm Linkages.* The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.[27] Phlx is proposing that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.[28]

• *Order Linkage Rates.* In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.[29] For example, the Plan requires linkages between customer orders and ''representative'' orders created in firm accounts for the purpose of facilitating a customer order, various legs of option/equity complex orders, riskless principal orders, and orders worked through average price accounts.[30] Phlx is proposing that there

[16] *See id.* [sic]

[17] *See* CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

[18] *Id.*

[19] *Id.*

[20] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, Appendix C, Section A.2(a).

[21] *See* CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid Exhange [sic]-Assigned Market Participant Identifier, and verification of the number of records in the file. *Id.*

[22] *See id.* The Plan notes that syntax and context checks would include format checks (*i.e.,* that data is entered in the specified format); data type checks (*i.e.,* that the data type of each attribute conforms to the specifications); consistency checks (*i.e.,* that all attributes for a record of a specified type are consistent); range/logic checks (*i.e.,* that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (*i.e.,* that each attribute for every record has an acceptable value); completeness checks (*i.e.,* that each mandatory attribute for every record is not null); and timeliness checks (*i.e.,* that the records were submitted within the submission timelines). *Id.*

[23] *See id.*

[24] *See id.*

[25] CAT NMS Plan, Appendix D, Section 3.

[26] *Id.*

[27] *Id.*

[28] This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

[29] *See* CAT NMS Plan, Appendix D, Section 3.

[30] *See id.*

be at least a 95% pre-correction and 98% post-correction linkage rate for multi-legged orders (*e.g.,* related equity/options orders, VWAP orders, riskless principal transactions).

• *Exchange and TRF/ORF Match Rates.* The Plan requires that an order lifecycle be created to link ''[o]rders routed from broker-dealers to exchanges'' and ''[e]xecuted orders and trade reports.'' [31] Phlx is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

In addition to these minimum error rates and matching thresholds that generally must be met before OATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Small Industry Member Data Availability

The second issue the Plan requires the proposed rule change to address is ''whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.''

Phlx believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Although Technical Specifications for Industry Members are not yet available, PHLX believes it would be inefficient, less reliable, and more costly to attempt to marry the OATS and CAT databases for a temporary period to allow some Phlx members to report to CAT while others continue to report to OATS. Consequently, Phlx has concluded at this time that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS. For this reason, Phlx supports an amendment to the Plan that would require current OATS Reporters that are ''Small Industry Members'' to report two years after the Effective Date (instead of three). Phlx intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

Phlx has identified approximately 300 member firms that currently report to OATS and meet the definition of ''Small Industry Member;'' however, only ten of these firms submit information to OATS on their own behalf, and eight of the ten firms report very few orders to OATS.[32] The vast majority of these 300 firms use third parties to fulfill their reporting obligations, and many of these third parties will begin reporting to CAT in November 2018. Consequently, Phlx believes that the burden on current OATS Reporters that are ''Small Industry Members'' would not be significant if those firms are required to report to CAT beginning in November 2018 rather than November 2019. The burdens, however, are significantly greater for those firms that are not reporting to OATS currently; therefore, Phlx does not believe it would be necessary or appropriate to accelerate CAT reporting for ''Small Industry Members'' that are not currently reporting to OATS, and PHLX would not support an amendment to the Plan to accelerate CAT reporting for ''Small Industry Members'' that are not currently OATS Reporters.

Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.''

As described above, Phlx believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (*e.g.,* OATS) if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, Phlx supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.

Changes to EBS and Account Identification Rules

Rule 785 is Phlx's rule regarding the automated submission of specific trading data to Phlx upon request using the Electronic Blue Sheet (''EBS'') system. Rule 785 requires members to submit certain trade information as prescribed by the Exchange, including, for proprietary transactions, the clearing house number or alpha symbol of the member submitting the data, the identifying symbol assigned to the security, and the date the transaction was executed.

Rule 1022 imposes certain account identification requirements on Specialists and Registered Options Traders. Specifically, Rule 1022 requires those market participants to file with the Exchange upon request and keep current a list identifying all accounts for stock, Exchange-Traded Fund Shares, option and related securities or foreign currencies, physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity and other related trading in which the Specialist or Registered Options Trader may, directly or indirectly, engage in trading activities or over which they exercise investment discretion. That Rule prohibits a Specialist or Registered Options Trader from engaging in trading in any of these instruments in an account that has not been reported to the Exchange pursuant to this rule.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, Phlx will not need to use the EBS system or request information

[31] *Id.*

[32] For example, in one recent month, eight of the ten firms submitted fewer than 100 reports during the month, with four firms submitting fewer than 50.

pursuant to these rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, these rules cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because Exchange staff may still need to request information pursuant to these rules for trading activity occurring before a member was reporting to the CAT.[33] In addition, these rules apply to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, these rules must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to Rule 785 and Rule 1022 to clarify how Phlx will request data under these rules after members are reporting to the CAT. Specifically, the proposed Supplementary Material to these rules will note that the Exchange will request information under these rules only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, the Exchange will make requests under these rules if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[34] Accordingly, as discussed in more detail below, Phlx believes that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes CAT Data should not be used in place of EBS data until all Participants and Industry Members are reporting data to CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [35] Phlx believes that the submission of data to the CAT by Small Industry Members a year earlier than is required in the CAT NMS Plan, at the same time as the other Industry Members, would expedite the replacement of EBS data with CAT Data, as Phlx believes that the CAT would then have all necessary data from the Industry Members for Phlx to perform the regulatory surveillance that currently is performed via EBS. For this reason, Phlx supports amending the CAT NMS Plan to require Small Industry Members to report data to the CAT two years after the Effective Date (instead of three), and intends to work with other Participants toward that end.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [36] Phlx believes that a single cut-over from EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the EBS requirements on a firm-by-firm basis. Phlx believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx does not believe that such exemptions would be an appropriate use of limited resources. Moreover, the primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to comply with EBS if it is also accurately and reliably reporting to the CAT. Phlx believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to EBS, and as discussed above, by accelerating Small Industry Members to report on the same timeframe as all other Industry Members, there is no need to exempt members from EBS requirements on a firm-by-firm basis.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [37] Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for Phlx to perform the regulatory functions that it now performs via EBS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx believes that, before CAT Data may be used in place of EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[38] Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line

[33] Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. *See* 17 CFR 240.17a–3(a), 240.17a–4.

[34] *Id.* [sic]

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

with the proposed retirement threshold for other systems, such as OATS and COATS.

In addition to these minimum error rates before using CAT Data instead of EBS data, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Changes to COATS

The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, Phlx and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

Phlx adopted Rule 1063 to implement certain reporting requirements related to COATS, and therefore proposes to eliminate the information reporting requirements of that rule and replacing those requirements with a requirement that members report information pursuant to this rule as required by Phlx's CAT Compliance Rule, Rule 900A.[39] Phlx also proposes to make a corresponding change to Option Floor Procedure Advices and Order and Decorum Regulations C–2.

Rule 1063(e) describes the operations and requirements of the Floor Broker Management System, which is designed to create an electronic audit trail for equity, equity index and U.S. dollar-settled foreign currency options orders represented by Floor Brokers on the Exchange's Options Floor. Among other things, Rule 1063(e) requires a Floor Broker or that Floor Broker's employees, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, to record order information including (i) the order type (*i.e.,* customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (*i.e.,* spread, straddle), or contingency order; and (v) number of contracts.

Option Floor Procedure Advices and Order and Decorum Regulations C–2 repeats these requirements, and imposes a schedule of fines for violating these requirements.

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[40] As discussed in more detail below, Phlx and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and Phlx has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

Phlx believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, Phlx will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [41] The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [42] Phlx believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. Phlx and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, Phlx and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine

[39] COATS was developed to comply with an order of the Commission requiring the then-options exchanges to ''design and implement'' a consolidated audit trail to ''enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.'' *See* Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the ''Order''). *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. Phlx has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. Once the CAT is fully operational, it will be appropriate to delete Phlx's rules implemented to comply with the Order as duplicative of the CAT. Accordingly, Phlx believes that it would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

[40] *Id.* [sic]

[41] *Id.*

[42] *Id.*

when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [43] Phlx believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, Phlx believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

Phlx and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[44] Phlx proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. Phlx believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. Phlx proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, Phlx proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for OATS.

In addition to these minimum error rates before COATS can be retired, Phlx believes that during the minimum 180-day period during which the thresholds are calculated, Phlx's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow Phlx to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. Phlx believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, Phlx will announce the implementation date of the proposed rule change in a *Regulatory Notice* that will be published once Phlx concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[45] in general, and furthers the objectives of Section 6(b)(5) of the Act,[46] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Phlx believes that the proposed rule change fulfills the obligation in the CAT NMS Plan for Phlx to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [47] As this proposal implements the Plan, Phlx believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for Phlx and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, Phlx believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that Phlx is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Exchange Act [48] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. Phlx does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Phlx notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist Phlx in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their rules related to OATS, EBS and COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Although written comments on the proposed rule change were not solicited, two commenters, the Financial Information Forum (''FIF'') and the Securities Industry and Financial Markets Association (''SIFMA''), submitted letters to the Participants regarding the retirement of systems related to the CAT.[49] In its comment letter, with regard to the retirement of duplicative systems more generally, FIF recommends that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommends that, once a CAT Reporter achieves satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believes that these recommendations ''would serve both an underlying regulatory objective of more

[43] *Id.*

[44] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

[47] Approval Order at 84697.

[48] 15 U.S.C. 78f(b)(8).

[49] Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017 (''FIF Letter''); Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017 (''SIFMA Letter''), at 2.

immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight.'' [50] In its comments about EBS specifically, FIF states that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of the EBS system.[51] Similarly, SIFMA states that ''the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems,'' and ''recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems.'' [52]

As discussed above, Phlx agrees with the commenters that the OATS, EBS and COATS reporting requirements should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, Phlx anticipates that the CAT will be designed to collect the data necessary to permit the retirement of OATS, EBS and COATS. As discussed above, Phlx disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality; however, Phlx supports amendments to the CAT NMS Plan that would accelerate reporting for Small Industry Members that are currently reporting to OATS to facilitate the retirement of that system.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2017–43 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-Phlx-2017–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2017–43, and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11506 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[50] FIF Letter at 2.

[51] *Id.*

[52] SIFMA Letter at 2.

[53] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 32666; 812–14703]**

## Dreyfus ETF Trust

May 30, 2017.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies (''Funds'') to issue shares redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (''NAV''); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (''Funds of Funds'') to acquire shares of the Funds; and (f) certain Funds (''Feeder Funds'') to create and redeem Creation Units in-kind in a master-feeder structure.

**APPLICANTS:** Dreyfus ETF Trust (the ''Trust''), a Massachusetts business trust registered under the Act as an open-end management investment company, The Dreyfus Corporation (the ''Initial Adviser''), a New York corporation registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') and Mellon Capital Management Corporation, a Delaware corporation registered with the Commission as an investment adviser under the Advisers Act.

**FILING DATES:** The application was filed on September 28, 2016, and amended on February 21, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission

orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 24, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: The Dreyfus Corporation, 200 Park Avenue, New York, New York 10166.

**FOR FURTHER INFORMATION CONTACT:** Rachel Loko, Senior Counsel, at (202) 551–6883, or Aaron Gilbride, Acting Branch Chief, at (202) 551–6906 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

**Summary of the Application**

1. Applicants request an order that would allow Funds to operate as index exchange traded funds (''ETFs'').[1] Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an ''Authorized Participant'', which will have signed a participant agreement with a broker-dealer that will be registered under the Securities Exchange Act of 1934 (''Exchange Act'') (the ''Distributor''). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds will operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond generally to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act (''Affiliated Person''), or an affiliated person of an Affiliated Person (''Second-Tier Affiliate''), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor will compile, create, sponsor or maintain the Underlying Index.[2]

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (''Deposit Instruments''), and shareholders redeeming their shares will receive specified instruments (''Redemption Instruments''). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its

[1] Applicants request that the order apply to the existing series of the Trust that are index ETFs and any additional series of the Trust, and any other open-end management investment company or series thereof, that may be created in the future (each, included in the term ''Fund''), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an ''Underlying Index''). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an ''Adviser'') and (b) comply with the terms and conditions of the application.

[2] Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.[3] The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Applicants also request relief to permit a Feeder Fund to acquire shares of another registered investment company managed by the Adviser having substantially the same investment objectives as the Feeder Fund (''Master Fund'') beyond the limitations in section 12(d)(1)(A) and permit the Master Fund, and any principal underwriter for the Master Fund, to sell shares of the Master Fund to the Feeder Fund beyond the limitations in section 12(d)(1)(B).

10. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11510 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[3] The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80814; File No. SR–BX–2017–027]**

## Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing of Proposed Rule Change To Eliminate Requirements That Will Be Duplicative of CAT

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2017, NASDAQ BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6950 relating to the Order Audit Trail System, Rule 8211 and Chapter IX, Section IV relating to Electronic Blue Sheets, Chapter VII, Section VII relating to account identification, and Chapter V, Section VII relating to the Consolidated Options Audit Trail System to reflect changes to these rules once members are effectively reporting to the Consolidated Audit Trail (''CAT'') and the CAT's accuracy and reliability meets certain standards as described below.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements..

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Rule 6950 relating to the Order Audit Trail System (''OATS''), Rule 8211 and Chapter IX, Section IV relating to Electronic Blue Sheets (''EBS''), Chapter VII, Section VII relating to account identification, and Chapter V, Section VII relating to the Consolidated Options Audit Trail System (''COATS'') to reflect changes to these rules once members are effectively reporting to the CAT, and the CAT's accuracy and reliability meets certain standards as described below.[3]

Background

Bats BYX Exchange, Inc.; Bats BZX Exchange, Inc.; Bats EDGA Exchange, Inc.; Bats EDGX Exchange, Inc.; BOX Options Exchange LLC; C2 Options Exchange, Incorporated; Chicago Board Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; FINRA; International Securities Exchange, LLC; Investors' Exchange LLC; ISE Gemini, LLC; ISE Mercury, LLC; Miami International Securities Exchange LLC; MIAX PEARL, LLC; NASDAQ BX, Inc.; NASDAQ PHLX LLC; The NASDAQ Stock Market LLC; National Stock Exchange, Inc.; New York Stock Exchange LLC; NYSE MKT LLC; and NYSE Arca, Inc. (collectively, the ''Participants'') filed with the Commission, pursuant to Section 11A of the Exchange Act [4] and Rule 608 of Regulation NMS thereunder,[5] the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[6] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed rule change on May 15, 2017 (SR–BX–2017–025). On May 30, 2017, the Exchange withdrew that filing and submitted this filing.

[4] 15 U.S.C. 78k–1.

[5] 17 CFR 242.608.

[6] *See* Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 24, 2015, the Participants submitted an amendment to the CAT NMS Plan. *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

ISE Gemini, LLC, ISE Mercury, LLC and International Securities Exchange, LLC have been renamed Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq ISE, LLC, respectively. *See* Securities Exchange Act Release No. 80248 (March 15, 2017), 82 FR 14547 (March 21, 2017); Securities Exchange Act Release No. 80326 (March 29, 2017), 82 FR 16460 (April 4, 2017); and Securities Exchange Act Release No. 80325 (March 29, 2017), 82 FR 16445 (April 4, 2017).

Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.[7] The Plan was published for comment in the **Federal Register** on May 17, 2016,[8] and approved by the Commission, as modified, on November 15, 2016.[9] On March 15, 2017, the Commission approved the new BX Rule 6800 Series and Chapter IX, Section 8 to implement provisions of the CAT NMS Plan that are applicable to BX members.[10]

The CAT NMS Plan is designed to create, implement, and maintain a consolidated audit trail that will capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution. Among other things, Section C.9. of Appendix C to the Plan, as modified by the Commission, requires each Participant to ''file with the SEC the relevant rule change filing to eliminate or modify its duplicative rules within six (6) months of the SEC's approval of the CAT NMS Plan.'' [11] The Plan notes that ''the elimination of such rules and the retirement of such systems [will] be effective at such time as CAT Data meets minimum standards of accuracy and reliability.'' [12] Finally, the Plan requires the rule filing to discuss the following:

(i) specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired;

(ii) whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems; and

(iii) whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.[13]

Changes to OATS

In response to these requirements, BX is proposing to delete Rule 6950 (the ''OATS Rules'') from the BX rulebook once the CAT achieves the specific accuracy and reliability standards described below, and BX has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations,[14] and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.[15]

Specific Accuracy and Reliability Standards

The first issue the Plan requires the proposed rule change to discuss is ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [16] BX believes that relevant error rates are the primary, but not the sole, metric by which to determine the CAT's accuracy and reliability and will serve as the baseline requirement needed before OATS can be retired to account for information being available in the CAT.

As discussed in Section A.3.(b) of Appendix C to the CAT NMS Plan, the Participants established an initial Error Rate, as defined in the Plan, of 5% on initially submitted data (*i.e.,* data as submitted by a CAT Reporter before any required corrections are performed). The Participants noted in the Plan that their expectation was that ''error rates after reprocessing of error corrections will be de minimis.'' [17] The Participants based this Error Rate on their consideration of ''current and historical OATS Error Rates, the magnitude of new reporting requirements on the CAT Reporters and the fact that many CAT Reporters may have never been obligated to report data to an audit trail.'' [18]

BX agrees with the Participants' conclusion that a 5% pre-correction threshold ''strikes the balance of adapting to a new reporting regime, while ensuring that the data provided to regulators will be capable of being used to conduct surveillance and market reconstruction, as well as having a sufficient level of accuracy to facilitate the retirement of existing regulatory reports and systems where possible.'' [19] However, BX believes that, when assessing the accuracy and reliability of the data for the purposes of retiring OATS, the error thresholds should be measured in more granular ways and should also include minimum error rates of post-correction data, which represents the data most likely to be used by BX to conduct surveillance. Although BX is proposing to measure the appropriate error rates in the aggregate, rather than firm-by-firm, BX believes that the error rates for equity securities should be measured separately from options since options orders are not currently reported regularly or included in OATS.

To ensure the CAT's accuracy and reliability, BX is proposing that, before OATS could be retired, the CAT would generally need to achieve a sustained error rate for Industry Member reporting in each of the categories below for a period of at least 180 days of 5% or lower, measured on a pre-correction or as-submitted basis and 2% or lower on a post-correction basis (measured at T+5).[20] BX is proposing to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180

National Stock Exchange, Inc. has been renamed NYSE National, Inc. *See* Securities Exchange Act Release No. 79902 (Jan. 30, 2017), 82 FR 9258 (February 3, 2017).

[7] 17 CFR 242.613.

[8] Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

[9] Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) (''Approval Order'').

[10] *See* Securities Exchange Act Release No. 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (SR–BX–2017–007).

[11] CAT NMS Plan, Appendix C, Section C.9.

[12] *See id.*

[13] *See id.*

[14] As noted in the Participants' September 23, 2016 response to comment letters on the Plan, the Participants ''worked to keep [the CAT] gap analyses up-to-date by including newly-added data fields in these duplicative systems, such as the new OATS data fields related to the tick size pilot and ATS order book changes, in the gap analyses.'' *See* Letter from Participants to Brent J. Fields, Secretary, Commission, dated September 23, 2016, at 21. The Participants noted that they ''will work with the Plan Processor and the industry to develop detailed Technical Specifications to ensure that by the time Industry Members are required to report to the CAT, the CAT will include all data elements necessary to facilitate the rapid retirement of duplicative systems.'' *Id.*

[15] BX notes that the OATS Rules were originally proposed to fulfill one of the undertakings contained in an order issued by the Commission relating to the settlement of an enforcement action against the National Association of Securities Dealers, Inc. for failure to adequately enforce its rules. *See* Securities Exchange Act Release No. 39729 (March 6, 1998), 63 FR 12559 (March 13, 1998). In approving the OATS Rules, the Commission concluded that OATS satisfied the conditions of the SEC's order and was consistent with the Exchange Act. *See id.* at 12566–67.

[16] *See id.* [sic]

[17] *See* CAT NMS Plan, Appendix C, Section A.3(b), at n.102.

[18] *Id.*

[19] *Id.*

[20] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, Appendix C, Section A.2(a).

consecutive days. BX believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds for Industry Member reporting while also ensuring that single-day measurements do not unduly affect the overall measurements.

BX is proposing to use error rates in each the following categories, measured separately for options and for equities, to assess whether the threshold pre- and post-correction error rates are being met:

• *Rejection Rates and Data Validations.* Data validations for the CAT, while not expected to be designed the same as OATS, must be functionally equivalent to OATS in accordance with the CAT NMS Plan (*i.e.,* the same types of basic data validations must be performed by the Plan Processor to comply with the CAT NMS Plan requirements). Appendix D of the Plan, for example, requires that certain file validations [21] and syntax and context checks be performed on all submitted records.[22] If a record does not pass these basic data validations, it must be rejected and returned to the CAT Reporter to be corrected and resubmitted.[23] The specific validations can be determined only after the Plan Processor has finalized the Industry Member Technical Specifications; however, the Plan also requires the Plan Processor to provide daily statistics on rejection rates after the data has been processed, including the number of files rejected and accepted, the number of order events accepted and rejected, and the number of each type of report rejected.[24] BX is proposing that, over the 180-day period, aggregate rejection rates (measured separately for equities and options) must be no more than 5% pre-correction or 2% post-correction across all CAT Reporters.

• *Intra-Firm Linkages.* The Plan requires that ''the Plan Processor must be able to link all related order events from all CAT Reporters involved in the lifecycle of an order.'' [25] At a minimum, this requirement includes the creation of an order lifecycle between ''[a]ll order events handled within an individual CAT Reporter, including orders routed to internal desks or departments with different functions (*e.g.,* an internal ATS).'' [26] BX is proposing that aggregate intra-firm linkage rates across all Industry Member Reporters must be at least 95% pre-correction and 98% post-correction.

• *Inter-Firm Linkages.* The order linkage requirements in the Plan also require that the Plan Processor be able to create the lifecycle between orders routed between broker-dealers.[27] BX is proposing that at least a 95% pre-correction and 98% post-correction aggregate match rate be achieved for orders routed between two Industry Member Reporters.[28]

• *Order Linkage Rates.* In addition to creating linkages within and between broker-dealers, the Plan also includes requirements that the Plan Processor be able to create lifecycles to link various pieces of related orders.[29] For example, the Plan requires linkages between customer orders and ''representative'' orders created in firm accounts for the purpose of facilitating a customer order, various legs of option/equity complex orders, riskless principal orders, and orders worked through average price accounts.[30] BX is proposing that there be at least a 95% pre-correction and 98% post-correction linkage rate for multi-legged orders (*e.g.,* related equity/options orders, VWAP orders, riskless principal transactions).

• *Exchange and TRF/ORF Match Rates.* The Plan requires that an order lifecycle be created to link ''[o]rders routed from broker-dealers to exchanges'' and ''[e]xecuted orders and trade reports.'' [31] BX is proposing at least a 95% pre-correction and 98% post-correction aggregate match rate to each equity exchange for orders routed from Industry Members to an exchange and, for over-the-counter executions, the same match rate for orders linked to trade reports.

In addition to these minimum error rates and matching thresholds that generally must be met before OATS can be retired, BX believes that during the minimum 180-day period during which the thresholds are calculated, BX's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. BX believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

**Small Industry Member Data Availability**

The second issue the Plan requires the proposed rule change to address is ''whether the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.''

BX believes that there is no effective way to retire OATS until all current OATS reporters are reporting to the CAT. Although Technical Specifications for Industry Members are not yet available, BX believes it would be inefficient, less reliable, and more costly to attempt to marry the OATS and CAT databases for a temporary period to allow some BX members to report to CAT while others continue to report to OATS. Consequently, BX has concluded at this time that having data from those Small Industry Members currently reporting to OATS available two years after the Effective Date would substantially facilitate a more expeditious retirement of OATS. For this reason, BX supports an amendment to the Plan that would require current OATS Reporters that are ''Small Industry Members'' to report two years after the Effective Date (instead of three). BX intends to work with the other Participants to submit a proposed amendment to the Plan to require Small Industry Members that are OATS Reporters to report two years after the Effective Date.

BX has identified approximately 300 member firms that currently report to OATS and meet the definition of ''Small Industry Member;'' however, only ten of these firms submit information to OATS on their own behalf, and eight of the ten

[21] *See* CAT NMS Plan, Appendix D, Section 7.2. The Plan requires the Plan Processor to confirm that file transmission and receipt are in the correct formats, including validation of header and trailers on the submitted report, confirmation of a valid Exchange [sic]-Assigned Market Participant Identifier, and verification of the number of records in the file. *Id.*

[22] *See id.* The Plan notes that syntax and context checks would include format checks (*i.e.,* that data is entered in the specified format); data type checks (*i.e.,* that the data type of each attribute conforms to the specifications); consistency checks (*i.e.,* that all attributes for a record of a specified type are consistent); range/logic checks (*i.e.,* that each attribute for every record has a value within specified limits and the values provided are associated with the event type they represent); data validity checks (*i.e.,* that each attribute for every record has an acceptable value); completeness checks (*i.e.,* that each mandatory attribute for every record is not null); and timeliness checks (*i.e.,* that the records were submitted within the submission timelines). *Id.*

[23] *See id.*

[24] *See id.*

[25] CAT NMS Plan, Appendix D, Section 3.

[26] *Id.*

[27] *Id.*

[28] This assumes linkage statistics will include both unlinked route reports and new orders where no related route report could be found.

[29] *See* CAT NMS Plan, Appendix D, Section 3.

[30] *See id.*

[31] *Id.*

firms report very few orders to OATS.[32] The vast majority of these 300 firms use third parties to fulfill their reporting obligations, and many of these third parties will begin reporting to CAT in November 2018. Consequently, BX believes that the burden on current OATS Reporters that are ''Small Industry Members'' would not be significant if those firms are required to report to CAT beginning in November 2018 rather than November 2019. The burdens, however, are significantly greater for those firms that are not reporting to OATS currently; therefore, BX does not believe it would be necessary or appropriate to accelerate CAT reporting for ''Small Industry Members'' that are not currently reporting to OATS, and BX would not support an amendment to the Plan to accelerate CAT reporting for ''Small Industry Members'' that are not currently OATS Reporters.

Individual Industry Member Exemptions

The final issue the Plan requires the proposed rule change to address is ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.''

As described above, BX believes that a single cut-over from OATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the OATS requirements on a firm-by-firm basis. The primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to report to a legacy system (*e.g.,* OATS) if it is also accurately and reliably reporting to the CAT. BX believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to OATS. Moreover, as discussed above, BX supports amending the Plan to accelerate the reporting requirements for Small Industry Members that are OATS Reporters to report on the same timeframe as all other OATS Reporters. If such an amendment were approved by the Commission, there would be no need to exempt members from OATS requirements on a firm-by-firm basis.

Changes to EBS and Account Identification Rules

The EBS rule is BX's rule regarding the automated submission of specific trading data to BX upon request using the Electronic Blue Sheet system. Rule 8211 applies to EBS reporting for equity securities, while Chapter IX, Section 4 applies EBS reporting to options. Rule 8211 and Chapter IX, Section 4 require members to submit certain trade information as prescribed by BX Regulation, including, for proprietary transactions, the clearing house number or alpha symbol of the member submitting the data, the identifying symbol assigned to the security, and the date the transaction was executed.

Chapter VII, Section VII imposes certain account identification requirements on Market Makers. Specifically, Chapter VII, Section VII requires, among other things, that each Market Maker shall file with BX Regulation and keep current a list identifying all accounts for stock, options and related securities trading in which the Market Maker may, directly or indirectly, engage in trading activities or over which it exercises investment discretion. The rule also prohibits a Market Maker from engaging in stock, options or related securities trading in an account which has not been reported pursuant to this rule.

Once broker-dealer reporting to the CAT has begun, the CAT will contain the data the Participants would otherwise have requested via the EBS system for purposes of NMS Securities and OTC Equity Securities. Consequently, BX will not need to use the EBS system or request information pursuant to these rules for NMS Securities or OTC Equity Securities for time periods after CAT reporting has begun if the appropriate accuracy and reliability thresholds are achieved, including an acceptable accuracy rate for customer and account information. However, these rules cannot be completely eliminated immediately upon the CAT achieving the appropriate thresholds because BX Regulation staff may still need to request information pursuant to these rules for trading activity occurring before a member was reporting to the CAT.[33] In addition, these rules apply to information regarding transactions involving securities that will not be reportable to the CAT, such as fixed-income securities; thus, these rules must remain in effect with respect to those transactions indefinitely or until those transactions are captured in the CAT.

The proposed rule change proposes to add new Supplementary Material to Rule 8211, Chapter VII, Section VII, and Chapter IX, Section 4 to clarify how BX will request data under these rules after members are reporting to the CAT. Specifically, the proposed Supplementary Material to these rules will note that BX Regulation will request information under these rules only if the information is not available in the CAT because, for example, the transactions in question occurred before the firm was reporting information to the CAT or involved securities that are not reportable to the CAT. In essence, under the new Supplementary Material, BX Regulation will make requests under these rules if and only if the information is not otherwise available through the CAT.

The CAT NMS Plan states, however, that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[34] Accordingly, as discussed in more detail below, BX believes that the EBS data may be replaced by CAT Data at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and BX has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

BX believes CAT Data should not be used in place of EBS data until all Participants and Industry Members are reporting data to CAT. In this way, BX will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [35]

[32] For example, in one recent month, eight of the ten firms submitted fewer than 100 reports during the month, with four firms submitting fewer than 50.

[33] Firms are required to maintain the trade information for pre-CAT transactions in equities and options pursuant to applicable rules, such as books and records retention requirements, for the relevant time period, which is generally three or six years depending upon the record. *See* 17 CFR 240.17a–3(a), 240.17a–4.

[34] *Id.* [sic]

[35] *Id.*

BX believes that the submission of data to the CAT by Small Industry Members a year earlier than is required in the CAT NMS Plan, at the same time as the other Industry Members, would expedite the replacement of EBS data with CAT Data, as BX believes that the CAT would then have all necessary data from the Industry Members for BX to perform the regulatory surveillance that currently is performed via EBS. For this reason, BX supports amending the CAT NMS Plan to require Small Industry Members to report data to the CAT two years after the Effective Date (instead of three), and intends to work with other Participants toward that end.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [36] BX believes that a single cut-over from EBS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the EBS requirements on a firm-by-firm basis. BX believes that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from EBS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, BX does not believe that such exemptions would be an appropriate use of limited resources. Moreover, the primary benefit to a firm-by-firm exemptive approach would be to reduce the amount of time an individual firm is required to comply with EBS if it is also accurately and reliably reporting to the CAT. BX believes that the overall accuracy and reliability thresholds for the CAT described above would need to be met under any conditions before firms could stop reporting to EBS, and as discussed above, by accelerating Small Industry Members to report on the same timeframe as all other Industry Members, there is no need to exempt members from EBS requirements on a firm-by-firm basis.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [37] BX believes that it is critical that the CAT Data be sufficiently accurate and reliable for BX to perform the regulatory functions that it now performs via EBS. Accordingly, BX believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

BX believes that, before CAT Data may be used in place of EBS data, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[38] BX proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. BX believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. BX proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. The 2% and 5% error rates are in line with the proposed retirement threshold for other systems, such as OATS and COATS.

In addition to these minimum error rates before using CAT Data instead of EBS data, BX believes that during the minimum 180-day period during which the thresholds are calculated, BX's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. BX believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

Changes to COATS

The options exchanges utilize COATS to collect and review data regarding options orders, quotes and transactions. The Participants have provided COATS technical specifications to the Plan Processor for the CAT for use in developing the Technical Specifications for the CAT, and the Participants are working with the Plan Processor to include the necessary COATS data elements in the CAT Technical Specifications. Accordingly, although the Technical Specifications for the CAT have not yet been finalized, BX and the other options exchanges propose to eliminate COATS in accordance with the proposed timeline discussed below.

BX adopted Chapter V, Section 7 to implement certain reporting requirements related to COATS, and therefore proposes to eliminate the information reporting requirements of that rule and replacing those requirements with a requirement that members report information pursuant to this rule as required by the Exchange's CAT compliance rule, Chapter IX, Section 8.[39] Among other things, Chapter V, Section 7 requires an Options Participant to ensure that each options order received from a Customer for execution on BX Options is recorded and time-stamped immediately, and also at the time of any modification or cancellation of the order. The rule also specifies the information that must be

[36] *Id.*

[37] *Id.*

[38] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

[39] COATS was developed to comply with an order of the Commission requiring the then-options exchanges to ''design and implement'' a consolidated audit trail to ''enable the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.'' *See* Section IV.B.e.(v) of the Commission's Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions (the ''Order''). *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File No. 3–10282. As noted, the Plan is designed to create, implement and maintain a CAT that would capture customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single consolidated data source. BX has already adopted rules to enforce compliance by its Industry Members, as applicable, with the provisions of the Plan. Once the CAT is fully operational, it will be appropriate to delete BX's rules implemented to comply with the Order as duplicative of the CAT. Accordingly, BX believes that it would continue to be in compliance with the requirements of the Order once the CAT is fully operational and the COATS rules are deleted.

contained at a minimum, including a unique order identification, the underlying security, opening/closing designation, the identity of the Clearing Participant, and the Options Participant identification.

The CAT NMS Plan states that the elimination of rules that are duplicative of the requirements of the CAT and the retirement of the related systems should be effective at such time as CAT Data meets minimum standards of accuracy and reliability.[40] As discussed in more detail below, BX and the other options exchanges believe that COATS may be retired at a date after all Industry Members are reporting to the CAT when the proposed error rate thresholds have been met, and BX has determined that its usage of the CAT Data has not revealed material issues that have not been corrected, confirmed that the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations, and confirmed that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

BX believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. In this way, BX will continue to have access to the necessary data to perform its regulatory duties.

The CAT NMS Plan requires that a rule filing to eliminate a duplicative rule address whether ''the availability of certain data from Small Industry Members two years after the Effective Date would facilitate a more expeditious retirement of duplicative systems.'' [41] The Exchange believes COATS should not be retired until all Participants and Industry Members that report data to COATS are reporting comparable data to the CAT. While the early submission of options data to the CAT by Small Industry Members could expedite the retirement of COATS, the Exchange believes that it premature to consider such a change and that additional analysis would be necessary to determine whether such early reporting by Small Industry Members would be feasible.

The CAT NMS Plan requires that this rule filing address ''whether individual Industry Members can be exempted from reporting to duplicative systems once their CAT reporting meets specified accuracy and reliability standards, including, but not limited to, ways in which establishing cross-system regulatory functionality or integrating data from existing systems and the CAT would facilitate such Individual Industry Member exemptions.'' [42] BX believes that a single cut-over from COATS to CAT is highly preferable to a firm-by-firm approach and is not proposing to exempt members from the COATS requirements on a firm-by-firm basis. BX and the other options exchanges believe that providing such individual exemptions to Industry Members would be inefficient, more costly, and less reliable than the single cut-over. Providing individual exemptions would require the options exchanges to create, for a brief temporary period, a cross-system regulatory function and to integrate data from COATS and the CAT to avoid creating any regulatory gaps as a result of such exemptions. Such a function would be costly to create and would give rise to a greater likelihood of data errors or other issues. Given the limited time in which such exemptions would be necessary, BX and the other options exchanges do not believe that such exemptions would be an appropriate use of limited resources.

The CAT NMS Plan also requires that a rule filing to eliminate a duplicative rule to provide ''specific accuracy and reliability standards that will determine when duplicative systems will be retired, including, but not limited to, whether the attainment of a certain Error Rate should determine when a system duplicative of the CAT can be retired.'' [43] BX believes that it is critical that the CAT Data be sufficiently accurate and reliable for the Exchange to perform the regulatory functions that it now performs via COATS. Accordingly, BX believes that the CAT Data should meet specific quantitative error rates, as well as certain qualitative requirements.

BX and the other options exchanges believe that, before COATS may be retired, the CAT would need to achieve a sustained error rate for a period of at least 180 days of 5% or lower measured on a pre-correction or as-submitted basis, and 2% or lower on a post-correction basis (measured at T+5).[44] BX proposes to measure the 5% pre-correction and 2% post-correction thresholds by averaging the error rate across the period, not require a 5% pre-correction and 2% post-correction maximum each day for 180 consecutive days. BX believes that measuring each of the thresholds over the course of 180 days will ensure that the CAT consistently meets minimum accuracy and reliability thresholds while also ensuring that single-day measurements do not unduly affect the overall measurements. BX proposes to measure the appropriate error rates in the aggregate, rather than firm-by-firm. In addition, BX proposes to measure the error rates for options only, not equity securities, as only options are subject to COATS. The 2% and 5% error rates are in line with the proposed retirement threshold for OATS.

In addition to these minimum error rates before COATS can be retired, BX believes that during the minimum 180-day period during which the thresholds are calculated, BX's use of the data in the CAT must confirm that (i) usage over that time period has not revealed material issues that have not been corrected, (ii) the CAT includes all data necessary to allow BX to continue to meet its surveillance obligations, and (iii) the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan. BX believes this time period to use the CAT Data is necessary to reveal any errors that may manifest themselves only after surveillance patterns and other queries have been run and to confirm that the Plan Processor is meeting its obligations and performing its functions adequately.

If the Commission approves the proposed rule change, BX will announce the implementation date of the proposed rule change in a *Regulatory Notice* that will be published once BX concludes the thresholds for accuracy and reliability described above have been met and that the Plan Processor is sufficiently meeting all of its obligations under the CAT NMS Plan.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[45] in general, and furthers the objectives of Section 6(b)(5) of the Act,[46] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

BX believes that the proposed rule change fulfills the obligation in the CAT NMS Plan for BX to submit a proposed rule change to eliminate or modify duplicative rules. In approving the Plan, the SEC noted that the Plan ''is necessary and appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly

[40] *Id.* [sic]

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] The Plan requires that the Plan Processor must ensure that regulators have access to corrected and linked order and Customer data by 8:00 a.m. Eastern Time on T+5. *See* CAT NMS Plan, at C–15.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.'' [47] As this proposal implements the Plan, BX believes that this proposal furthers the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Exchange Act.

Moreover, the purpose of the proposed rule change is to eliminate rules that require the submission of duplicative data to the exchange. The elimination of such duplicative requirements will reduce unnecessary costs and other compliance burdens for BX and its members, and therefore, will enhance the efficiency of the securities markets. Furthermore, BX believes that the approach set forth in the proposed rule change strikes the appropriate balance between ensuring that BX is able to continue to fulfill its statutory obligation to protect investors and the public interest by ensuring its surveillance of market activity remains accurate and effective while also establishing a reasonable timeframe for elimination or modification of its rules that will be rendered duplicative after implementation of the CAT.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Section 6(b)(8) of the Exchange Act [48] requires that the Exchange's rules not impose any burden on competition that is not necessary or appropriate. BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. BX notes that the proposed rule change implements the requirements of the CAT NMS Plan approved by the Commission regarding the elimination of rules and systems that are duplicative the CAT, and is designed to assist BX in meeting its regulatory obligations pursuant to the Plan. Similarly, all exchanges and FINRA are proposing the elimination of their rules related to OATS, EBS and COATS to implement the requirements of the CAT NMS Plan. Therefore, this is not a competitive rule filing and, therefore, it does not raise competition issues between and among the self-regulatory organizations and/or their members.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Although written comments on the proposed rule change were not solicited, two commenters, the Financial Information Forum (''FIF'') and the Securities Industry and Financial Markets Association (''SIFMA''), submitted letters to the Participants regarding the retirement of systems related to the CAT.[49] In its comment letter, with regard to the retirement of duplicative systems more generally, FIF recommends that the Participants continue the effort to incorporate current reporting obligations into the CAT in order to replace existing reportable systems with the CAT. In addition, FIF further recommends that, once a CAT Reporter achieves satisfactory reporting data quality, the CAT Reporter should be exempt from reporting to any duplicative reporting systems. FIF believes that these recommendations ''would serve both an underlying regulatory objective of more immediate and accurate access to data as well as an industry objective of reduced costs and burdens of regulatory oversight.'' [50] In its comments about EBS specifically, FIF states that the retirement of the EBS requirements should be a high priority, and that the CAT should be designed to include the requisite data elements to permit the rapid retirement of the EBS system.[51] Similarly, SIFMA states that ''the establishment of the CAT must be accompanied by the prompt elimination of duplicative systems,'' and ''recommend[ed] that the initial technical specifications be designed to facilitate the immediate retirement of . . . duplicative reporting systems.'' [52]

As discussed above, BX agrees with the commenters that the OATS, EBS and COATS reporting requirements should be replaced by the CAT reporting requirements as soon as accurate and reliable CAT Data is available. To this end, BX anticipates that the CAT will be designed to collect the data necessary to permit the retirement of OATS, EBS and COATS. As discussed above, BX disagrees with the recommendation to provide individual exemptions to those CAT Reporters who obtain satisfactory data reporting quality; however, BX supports amendments to the CAT NMS Plan that would accelerate reporting for Small Industry Members that are currently reporting to OATS to facilitate the retirement of that system.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2017–027 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2017–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and

[47] Approval Order at 84697.

[48] 15 U.S.C. 78f(b)(8).

[49] Letter from William H. Hebert, FIF, to Participants re: Milestone for Participants' rule change filings to eliminate/modify duplicative rules, dated April 12, 2017 (''FIF Letter''); Letter from Kenneth E. Bentsen, Jr., SIFMA, to Participants re: Selection of Thesys as CAT Processor, dated April 4, 2017 (''SIFMA Letter''), at 2.

[50] FIF Letter at 2.

[51] *Id.*

[52] SIFMA Letter at 2.

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2017–027, and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[53]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11508 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80806; File No. SR–NYSEArca–2017–53]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting New NYSE Arca Rule 11.21 and NYSE Arca Equities Rule 5220, NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16, and Amending NYSE Arca Rule 10.17 and NYSE Arca Equities 10.15

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2017, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange propose (1) a new NYSE Arca Rule 11.21 and a new NYSE Arca Equities Rule 5220 that define and prohibit two types of disruptive quoting and trading activity on the Exchange; (2) a new NYSE Arca Rule 10.18 and a new NYSE Arca Equities Rule 10.16 governing supplemental expedited suspension proceedings; and (3) amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities 10.15 to permit release to the public of suspension notices and orders issued pursuant to proposed NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16, respectively. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes (1) a new NYSE Arca Rule 11.21 and NYSE Arca Equities Rule 5220 that define and prohibit two types of disruptive quoting and trading activity on the Exchange; (2) a new NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16 governing supplemental expedited suspension proceedings; and (3) amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities 10.15 to permit release to the public of suspension notices and orders issued pursuant to proposed NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16, respectively.

The proposed rule change is based on rules recently adopted by Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (''BATS''), and The Nasdaq Stock Market LLC (''NASDAQ'').[3] The proposed rules are the same as those adopted by BATS and NASDAQ, with the following exceptions discussed below: (1) Conforming references to reflect the Exchange's equities and options membership and disciplinary process; and (2) the call for review process in proposed Rule NYSE Arca Rule 10.18(f) and NYSE Arca Equities Rule 10.16(f). The Exchange believes that having consistent rules for issuing a cease and desist order on an expedited basis as other self-regulatory organizations (''SROs'') to halt certain disruptive and manipulative quoting and trading activity would enhance the Exchange's ability to protect investors and market integrity.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its member organizations and persons associated with its member organizations, with the Act, the rules and regulations thereunder, and the Exchange's Rules.[4] Further, the Exchange's Rules are required to be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest.'' [5]

In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that

[53] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. *See* Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (SR–BATS–2015–101) (''BATS Approval Order''); *see also* Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (SR–BatsEDGA–2016–03) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (SR–BatsBYX–2016–03) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (SR–BatsEDGX–2016–04) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, NASDAQ filed a substantially similar proposed rule change with the SEC for immediate effectiveness. *See* Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR–NASDAQ–2016–074). NASDAQ has also extended the rule to other exchanges. *See, e.g.,* Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR–NASDAQ–2016–092). Similarly, the Financial Industry Regulatory Authority, Inc. (''FINRA'') also recently prohibited disruptive quoting and trading and amended its procedural rules. *See* Securities Exchange Act Release No. 76361 (November 21, 2016), 81 FR 85650 (November 28, 2016) (SR–FINRA–2016–043). *See also* Securities Exchange Act Release No. 79182 (October 28, 2016), 81 FR 76639 (November 3, 2016) (SR–MIAX–2016–40) (adopting identical rules for Miami International Securities Exchange LLC); Securities Exchange Act Release No. 79646 (December 21, 2016), 81 FR 95713 (December 28, 2016) (SR–BOX–2016–59) (adopting identical rules for BOX Options Exchange LLC).

[4] 15 U.S.C. 78f(b)(1).

[5] 15 U.S.C. 78f(b)(1).

includes automated surveillance of trading activity operated directly by Exchange staff. When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange conducts an investigation into the activity and requests documents and information. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules are identified, the Exchange will commence disciplinary proceedings, which could result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period sometimes is necessary and appropriate to afford adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange. In recent years, several cases have been brought and resolved by the Exchange and other SROs involving allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering [6] or spoofing.[7]

The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, the parties responsible for such conduct or responsible for their customers' conduct continued the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. To supplement other Exchange Rules on which it may already rely to stop such activity from continuing, the Exchange believes that it should have additional authority to initiate expedited suspension proceedings in order to stop behavior from continuing on the Exchange if a member organization or a person associated with its member organization is engaging in or facilitating disruptive quoting and trading activity and the member organization or associated person has received sufficient notice with an opportunity to respond, but such activity has not ceased. The following examples involving the Exchange and its affiliate the New York Stock Exchange LLC (''NYSE'') are instructive regarding the rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (''Biremis'') and its CEO were barred from the securities industry for, among other things, supervisory violations related to a failure by Biremis to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[8] Biremis' sole business was providing trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by Biremis to U.S. markets originated directly or indirectly from its foreign clients. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the NYSE, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although Biremis and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, Biremis took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (''Hold Brothers'') settled a regulatory action in connection with its provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[9] Many traders using the firm's services were located in foreign jurisdictions. Hold Brothers ultimately settled the action with FINRA and several exchanges, including NYSE Arca, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[10] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, Hold Brothers also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. Hold Brothers was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years. The Exchange also notes that criminal proceedings were initiated against Navinder Singh Sarao for manipulative trading activity, including forms of layering and spoofing in the futures markets, that were identified as a contributing factor to the ''Flash Crash'' of 2010, and yet continued through 2015. In November 2016, Mr. Sarao pled guilty to one count each of wire fraud and spoofing.[11]

[6] ''Layering'' can include a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[7] ''Spoofing'' can include a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[8] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[9] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[10] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

[11] The plea agreement in *United States* v. *Navinder Singh Sarao,* Docket Number: 1:15–CR–00075–1 (N.D. Ill.), is available at *https://www.justice.gov/criminal-fraud/file/910196/download.*

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

**Proposed Rule Change**

*Disruptive Quoting and Trading Activity Rules*

Proposed NYSE Arca Rule 11.21

The Exchange proposes to adopt new NYSE Arca Rule 11.21 to define and prohibit disruptive quoting and trading activity on the Exchange. Proposed NYSE Arca Rule 11.21(a) would prohibit OTP Holders, OTP Firms or any participant [12] from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed NYSE Arca Rule 11.21(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

The Exchange proposes to adopt NYSE Arca Rule 11.21(b)(1) and (2) providing additional details regarding disruptive quoting and trading activity. Proposed NYSE Arca Rule 11.21(b)(1) would describe disruptive quoting and trading activity containing many of the elements indicative of layering. For purposes of the proposed Rule, disruptive quoting and trading activity would include a frequent pattern in which the following facts are present:

- A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders'') (proposed NYSE Arca Rule 11.21(b)(1)(A)); and
- following the entry of the Displayed Orders, the level of supply and demand for the security changes (proposed NYSE Arca Rule 11.21(b)(1)(B)); and
- the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed (proposed NYSE Arca Rule 11.21(b)(1)(C)); and
- following the execution of the Contra-Side Orders, the party cancels the Displayed Orders (proposed NYSE Arca Rule 11.21(b)(1)(D)).

Proposed NYSE Arca Rule 11.21(b)(2) would describe disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present:

- A party narrows the spread for a security by placing an order inside the national best bid or offer (proposed NYSE Arca Rule 11.21(b)(2)(A)); and
- the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(2)(A) that narrowed the spread (proposed NYSE Arca Rule 11.21(b)(2)(B)).

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above and with the rules of other SROs.[13]

Proposed NYSE Arca Rule 11.21(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 11.21(b)(1)(A)–(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues.

Proposed NYSE Arca Equities Rule 5220

The Exchange proposes to adopt a new NYSE Arca Equities Rule 5220 that would be substantially the same as proposed NYSE Arca Rule 11.21.

Like its NYSE Arca counterpart, proposed NYSE Arca Equities Rule 5220 would define and prohibit disruptive quoting and trading activity on the Exchange. Proposed NYSE Arca Equities Rule 5220(a) would prohibit ETP Holders or associated persons of ETP Holders [14] from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed NYSE Arca Equities Rule 5220(b)(1) and (2), including acting in concert with other persons to effect such activity. Proposed NYSE Arca Equities Rule 5220(b)(1) would describe disruptive quoting and trading activity containing many of the elements indicative of layering. For purposes of the proposed Rule, disruptive quoting and trading activity would include a frequent pattern in which the following facts are present:

- A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders'') (proposed NYSE Arca Equities Rule 5220(b)(1)(A)); and
- following the entry of the Displayed Orders, the level of supply and demand for the security changes (proposed NYSE Arca Equities Rule 5220(b)(1)(B)); and
- the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed (proposed NYSE Arca Equities Rule 5220(b)(1)(C)); and

[12] The term ''OTP'' refers to an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. See NYSE Arca Rule 1(p). NYSE Arca Rule 1(t) defines ''participant'' to mean any ''OTP Holder, Allied Person, partner, approved person, stockholder associate, registered employee or other full-time employee of an OTP Firm.'' NYSE Arca Equities Rule 1(q) defines ''OTP Holder'' as a ''natural person, in good standing, who has been issued an OTP, or has been named as a Nominee.'' An OTP Holder must be a registered broker or dealer or a nominee or an associated person of a registered broker or dealer approved by the Exchange to conduct business on the Exchange's Trading Facilities, which is defined as the Exchange's ''facilities for the trading of options, office space provided by the Exchange to OTP Holders and OTP Firms in connection with their floor trading activities, and any and all electronic or automated order execution systems and reporting services provided by the Exchange to OTP Holders and OTP Firms.'' *See* Rule 1(aa). An ''OTP Firm'' means a proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities. An OTP Firm must also be a registered broker or dealer.

[13] *See, e.g.,* BATS Rule 12.15; NASDAQ Rule 2170. *See generally* note 4, *supra.*

[14] The term ''ETP'' refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on NYSE Arca Equities' Trading Facilities. See NYSE Arca Equities Rule 1(m). NYSE Arca Equities Rule 1(n) defines ''ETP Holder'' as a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must also be a registered broker or dealer.

• following the execution of the Contra-Side Orders, the party cancels the Displayed Orders (proposed NYSE Arca Equities Rule 5220(b)(1)(D)).

Proposed Rule 996NY(b)(2) would describe disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present:

• A party narrows the spread for a security by placing an order inside the national best bid or offer (proposed NYSE Arca Equities Rule 5220(b)(2)(A)); and

• the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(2)(A) that narrowed the spread (proposed NYSE Arca Equities Rule 5220(b)(2)(B)).

As with proposed NYSE Arca Rule 11.21, the Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the proposed NYSE Arca Equities Rule are consistent with the activities that have been identified and described in the client access cases described above and with the rules of other SROs.[15]

Proposed NYSE Arca Equities Rule 5220(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. The proposed Rule would also make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges.

*Procedural Rules*

Proposed NYSE Arca Rule 10.18

The Exchange proposes a new NYSE Arca Rule 10.18 that would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or covered person from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a member organization or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity.

Under proposed paragraph (a)(1) of NYSE Arca Rule 10.18, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Exchange's Enforcement department may initiate an expedited suspension proceeding with respect to alleged violations of NYSE Arca Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited). Proposed paragraph (a) would also set forth the requirements for notice ((a)(2)) and service of such notice ((a)(3)) pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of NYSE Arca Rule 10.18 would govern the appointment of a Conduct Panel, and would provide that a Conduct Panel shall be assigned in accordance with paragraph (a) of NYSE Arca Rule 10.5.[16]

Under paragraph (c)(1) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Administrator with the consent of the Parties for good cause shown.

Under paragraph (c)(2) of the proposed Rule, a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Hearing Administrator. Under the proposed Rule, service shall be made by personal service or overnight commercial courier and shall be effective upon service.

Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Administrators ((c)(3), witnesses ((c)(4)), additional information that may be required by the Conduct Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed paragraph (c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Conduct Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Conduct Panel may order that the suspension proceeding be dismissed.

Under paragraph (d)(1) of the proposed Rule, the Conduct Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Conduct Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Conduct Panel with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Conduct Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d)(2) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating NYSE Arca Rule 11.21 and/or ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of NYSE Arca Rule 11.21 ((d)(2)(A)). Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order ((d)(2)(B)). The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from ((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)).

As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below.

Finally, paragraph (d)(4) would require service of the Conduct Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of NYSE Arca Rule 10.18 would provide that at any

[15] *See, e.g.,* BATS Rule 12.15; NASDAQ Rule 2170; BOX Options Exchange LLC Rule 3220. *See generally* note 3, *supra.*

[16] NYSE Arca Rule 10.5 governs hearings and provides that the Ethics and Business Conduct Committee (''EBCC'') shall appoint three or more members to hear a matter once a hearing is requested. *See* NYSE Arca Rule 10.5(a). NYSE Arca Rule 10.5 also provides for a Hearing Administrator to oversee the Conduct Panel rather than a hearing officer. There is also no process under NYSE Arca Rules for the recusal or disqualification of Hearing Administrators. Accordingly, the Exchange does not propose to adopt those provisions from the BATS procedural rules governing the recusal and disqualification of hearing officer in connection with a suspension proceeding. *See* BAT Rule 8.17(b)(2).

time after the Hearing Administrator served the Respondent with a suspension order, a Party could apply to the Conduct Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) provides the Conduct Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Conduct Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Conduct Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Conduct Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Conduct Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed paragraph (f) would describe the call for review process by the Exchange Board of Directors. Specifically, the proposed Rule would provide that if there is no pending application to the Conduct Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with NYSE Arca Rule 10.8 (Review), may call for review the Conduct Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

Finally, proposed paragraph (g) would provide that sanctions issued under the proposed Rule 10.18 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Proposed NYSE Arca Equities Rule 10.16

The Exchange proposes a new NYSE Arca Equities Rule 10.16 that would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or covered person from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a member organization or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity.

Under proposed paragraph (a)(1) of NYSE Arca Equities Rule 10.16, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Exchange's Enforcement department may initiate an expedited suspension proceeding with respect to alleged violations of NYSE Arca Equities Rule 5220 (Disruptive Quoting and Trading Activity Prohibited). Proposed paragraph (a) would also set forth the requirements for notice ((a)(2)) and service of such notice ((a)(3)) pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of NYSE Arca Equities Rule 10.16 would govern the appointment of a Conduct Panel, and would provide that a Conduct Panel shall be assigned in accordance with paragraph (a) of NYSE Arca Rule 10.5.[17]

Under paragraph (c)(1) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Administrator with the consent of the Parties for good cause shown.

Under paragraph (c)(2) of the proposed Rule, a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Hearing Administrator. Under the proposed Rule, service shall be made by personal service or overnight commercial courier and shall be effective upon service.

Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Administrator ((c)(3), witnesses ((c)(4)), additional information that may be required by the Conduct Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed paragraph (c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Conduct Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Conduct Panel may order that the suspension proceeding be dismissed.

Under paragraph (d)(1) of the proposed Rule, the Conduct Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Conduct Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Hearing Administrator with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Conduct Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d)(2) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed NYSE Arca Equities Rule 5220, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of proposed NYSE Arca Equities Rule 5220 ((d)(2)(A)). Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order ((d)(2)(B)). The order shall describe in reasonable detail the act or acts the Respondent is to take

[17] NYSE Arca Equities Rule 10.5 governs hearings and provides that the Business Conduct Committee (''BCC'') shall appoint one or more members to hear a matter once a hearing is requested. *See* NYSE Arca Equities Rule 10.5(a). NYSE Arca Equities Rule 10.5 also provides for a Hearing Administrator to oversee the Conduct Panel rather than a hearing officer. There is also no process under NYSE Arca Equities Rules for the recusal or disqualification of Hearing Administrators. Accordingly, the Exchange does not propose to adopt those provisions from the BATS procedural rules governing the recusal and disqualification of hearing officer in connection with a suspension proceeding on NYSE Arca Equities. *See* BAT Rule 8.17(b)(2).

or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from ((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)).

As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below.

Finally, paragraph (d)(4) would require service of the Conduct Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of NYSE Arca Equities Rule 10.16 would provide that at any time after the Hearing Administrator serves the Respondent with a suspension order, a Party could apply to the Conduct Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of NYSE Arca Equities Rule 10.16 provides the Conduct Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Conduct Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Conduct Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Conduct Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Conduct Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed paragraph (f) would describe the call for review process by the Exchange Board of Directors. Specifically, the proposed Rule would provide that if there is no pending application to the Conduct Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with NYSE Arca Equities Rule 10.8 (Review), may call for review the Conduct Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

Finally, proposed paragraph (g) would provide that sanctions issued under the proposed NYSE Arca Equities Rule 10.16 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

*Release of Disciplinary Complaints, Decisions and Other Information*

Proposed Amendments to NYSE Arca Rule 10.17

The Exchange proposes amendments to NYSE Arca Rule 10.17 to permit release to the public of suspension notices and orders issued pursuant to proposed NYSE Arca Rule 10.16. Specifically, the Exchange proposes to include a notice of the initiation of a suspension proceeding served pursuant to proposed NYSE Arca Rule 10.18 in the definition of ''disciplinary complaint'' under NYSE Arca Rule 10.17(e)(1). Similarly, the Exchange would include suspension orders issued pursuant to proposed NYSE Arca Rule 10.18 in the definition of ''disciplinary decision'' under NYSE Arca Rule 10.17(e)(2).

Proposed Amendments to NYSE Arca Equities Rule 10.15

The Exchange proposes amendments to NYSE Arca Equities Rule 10.15 to permit release to the public of suspension notices and orders issued pursuant to proposed NYSE Arca Equities Rule 10.16. Specifically, the Exchange proposes to include a notice of the initiation of a suspension proceeding served pursuant to proposed NYSE Arca Equities Rule 10.16 in the definition of ''disciplinary complaint'' under NYSE Arca Equities Rule 10.15(e)(1). Similarly, the Exchange would include suspension orders issued pursuant to proposed NYSE Arca Equities Rule 10.16 in the definition of ''disciplinary decision'' under NYSE Arca Equities Rule 10.15(e)(2).

The proposed amendments to NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 are consistent with the FINRA Rule 8313 and the rules of the other SROs modeled on FINRA Rule 8313.[18]

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In summary, proposed NYSE Arca Rule 11.21 and NYSE Arca Equities Rule 5220 and Rule 996NY, coupled with proposed procedural rule NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16, respectively, would provide the Exchange with another form and means of authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. The following example illustrates how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation, the Exchange would contact the member organization or covered person responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same member organization or covered person and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the member organization or covered person that would include details regarding the alleged violations as well as the proposed sanction.

In such a case the proposed sanction would likely be to order the member organization or covered person to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such member organization or covered person unless and until such action is taken. The member organization or covered person would have the opportunity to be heard in front of a Conduct Panel at a hearing to be conducted within 15 days of the notice. If the Conduct Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Conduct Panel would dismiss the suspension order proceeding. If the Conduct Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption

[18] *See* FINRA Rule 8313; BATS Rule 8.18.

or other significant harm to investors, then the Conduct Panel would issue the order including the proposed sanction, ordering the member organization or covered person to cease providing access to the client at issue and suspending such Member unless and until such action is taken.

If such member organization or covered person wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such member organization or covered person could apply to the Conduct Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the member or member organization pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action against a member organization or covered person in the event that such member organization or covered person is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent matters such as the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have this supplemental authority to promptly initiate expedited suspension proceedings against any member organization or covered person who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such member organization or covered person to terminate access to the Exchange to one or more clients that are [sic] responsible for the violative activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, NYSE Arca Rule 10.18 and NYSE Arca Equities Rule 10.16 are, by their terms, limited to violations of NYSE Arca Rule 11.21 and NYSE Arca Equities Rule 5220, respectively, when necessary to protect investors, other member organizations or covered persons, and the Exchange.

Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Conduct Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity. Notwithstanding the adoption of the proposed rules along with existing disciplinary rules in NYSE Arca Rule and NYSE Arca Equities Rule 10, the Exchange also notes that that pursuant to NYSE Arca Rule 13.9 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) and NYSE Arca Equities Rule 11.9 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), if a OTP Firms, OTP Holders or Associated Persons of an OTP Firm or OTP Holder or ETP Holder or Associated Person of ETP Holder, respectively, cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of proposed NYSE Arca Rule 11.21 or proposed NYSE Arca Equities Rule 5220 has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[21] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed.

As noted throughout this filing, the Exchange believes that these rule proposals are necessary for the protection of investors rather than allowing disruptive quoting and trading activity to occur for several years. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[22] The Exchange believes that this proposal will provide the Exchange with additional means to enforce against such behavior in an expedited manner while providing member organizations or covered person with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* Section 3 herein, the Purpose section, for examples of conduct referred to herein.

the public interest from such ongoing behavior.

The Exchange believes that the proposal is also consistent with Section 6(b)(7) of the Act,[23] which requires that the rules of an exchange ''provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.'' Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[24] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed NYSE Arca Rule 10.18 and proposed NYSE Arca Equities Rule 10.16. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other member organizations or covered persons and the Exchange, and even in such cases, respondents will be afforded due process in connection with the suspension proceedings.

Finally, the Exchange believes that amending NYSE Arca Rule 10.17 and NYSE Arca Equities Rule 10.15 to permit release to the public of suspension notices and orders issued pursuant to proposed NYSE Arca Rule 10.18 and proposed NYSE Arca Equities Rule 10.16, respectively, furthers the objectives of Section 6(b)(5) of the Act[25] by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. The Exchange also believes that the proposed rule change promotes greater transparency to the Exchange's disciplinary process by providing greater access to information regarding its disciplinary actions and valuable guidance and information to persons subject to the Exchange's jurisdiction, regulators, and the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic] market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other member organizations or covered persons, and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct. The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing member organizations or covered persons with the necessary due process. Finally, the proposed rule change is designed to enhance the Exchange's rules governing the release of disciplinary complaints, decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[26] and Rule 19b–4(f)(6) thereunder.[27] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[28] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[29] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–NYSEArca–2017–53 on the subject line.*

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2017–53. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

[23] 15 U.S.C. 78f(b)(7).
[24] 15 U.S.C. 78f(d)(1).
[25] 15 U.S.C. 78f(b)(5).
[26] 15 U.S.C. 78s(b)(3)(A)(iii).
[27] 17 CFR 240.19b-4(f)(6).
[28] 17 CFR 240.19b–4(f)(6).
[29] 17 CFR 240.19b–4(f)(6)(iii).
[30] 15 U.S.C. 78s(b)(2)(B).

*rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2017–53 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11501 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80804; File No. SR–NYSEMKT–2017–25]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Rules 5220—Equities, 996NY Options and 9560 and Amending Rule 8313

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes (1) new Rules 5220—Equities and 996NY (Options) that define and prohibit two types of disruptive quoting and trading activity on the Exchange; (2) a new Rule 9560 governing supplemental expedited suspension proceedings; and (3) amendments to Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes (1) a new Rule 5220—Equities (''Rule 5220'') and a new Rule 996NY (Options) that define and prohibits two types of disruptive quoting and trading activity on the Exchange; (2) a new Rule 9560 governing supplemental expedited suspension proceedings; and (3) amendments to Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560.

The proposed rule change is based on rules recently adopted by Bats BZX Exchange, Inc., formerly known as BATS Exchange, Inc. (''BATS''), and The Nasdaq Stock Market LLC (''NASDAQ'').[3] The proposed rules are the same as those adopted by BATS and NASDAQ, with the following exceptions discussed below: (1) Conforming references to reflect the Exchange's equities and options membership; and (2) the call for review process in proposed Rule 9560(f). The Exchange believes that having consistent rules for issuing a cease and desist order on an expedited basis as other self-regulatory organizations (''SROs'') to halt certain disruptive and manipulative quoting and trading activity would enhance the Exchange's ability to protect investors and market integrity.

Background

As a national securities exchange registered pursuant to Section 6 of the Act, the Exchange is required to be organized and to have the capacity to enforce compliance by its member organizations and persons associated with its member organizations, with the Act, the rules and regulations thereunder, and the Exchange's Rules.[4] Further, the Exchange's Rules are required to be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general,

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 18, 2016, the SEC approved a proposed rule change filed by BATS to adopt new BATS Rule 12.15, which prohibits certain types of disruptive quoting and trading activities, and BATS Rule 8.17, which permits BATS to conduct a new expedited suspension proceeding when it believes BATS Rule 12.15 has been violated. *See* Securities Exchange Act Release No. 77171 (February 18, 2016), 81 FR 9017 (February 23, 2016) (SR–BATS–2015–101) (''BATS Approval Order''); *see also* Securities Exchange Act Release No. 77606 (April 13, 2016), 81 FR 23026 (April 19, 2016) (SR–BatsEDGA–2016–03) (adopting identical rules for Bats EDGA Exchange, Inc.); Securities Exchange Act Release No. 77602 (April 13, 2016), 81 FR 23046 (April 19, 2016) (SR–BatsBYX–2016–03) (adopting identical rules for Bats BYX Exchange, Inc.); Securities Exchange Act Release No. 77589 (April 12, 2016), 81 FR 22691 (April 18, 2016) (SR–BatsEDGX–2016–04) (adopting identical rules for Bats EDGX Exchange, Inc.). On May 19, 2016, NASDAQ filed a substantially similar proposed rule change with the SEC for immediate effectiveness. *See* Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR–NASDAQ–2016–074). NASDAQ has also extended the rule to other exchanges. *See, e.g.,* Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR–NASDAQ–2016–092). Similarly, the Financial Industry Regulatory Authority, Inc. (''FINRA'') also recently prohibited disruptive quoting and trading and amended its procedural rules. *See* Securities Exchange Act Release No. 76361 (November 21, 2016), 81 FR 85650 (November 28, 2016) (SR–FINRA–2016–043). *See also* Securities Exchange Act Release No. 79182 (October 28, 2016), 81 FR 76639 (November 3, 2016) (SR–MIAX–2016–40) (adopting identical rules for Miami International Securities Exchange LLC); Securities Exchange Act Release No. 79646 (December 21, 2016), 81 FR 95713 (December 28, 2016) (SR–BOX–2016–59) (adopting identical rules for BOX Options Exchange LLC).

[4] 15 U.S.C. 78f(b)(1).

to protect investors and the public interest.'' [5]

In fulfilling these requirements, the Exchange has developed a comprehensive regulatory program that includes automated surveillance of trading activity operated directly by Exchange staff. When disruptive and potentially manipulative or improper quoting and trading activity is identified, the Exchange conducts an investigation into the activity and requests documents and information. To the extent violations of the Act, the rules and regulations thereunder, or Exchange Rules are identified, the Exchange will commence disciplinary proceedings, which could result in, among other things, a censure, a requirement to take certain remedial actions, one or more restrictions on future business activities, a monetary fine, or a temporary or permanent ban from the securities industry.

The process described above, from the identification of disruptive and potentially manipulative or improper quoting and trading activity to a final resolution of the matter, can often take several years. The Exchange believes that this time period sometimes is necessary and appropriate to afford adequate due process, particularly in complex cases. However, as described below, the Exchange believes that there are certain obvious and uncomplicated cases of disruptive and manipulative behavior or cases where the potential harm to investors is so large that the Exchange should have the authority to initiate an expedited suspension proceeding in order to stop the behavior from continuing on the Exchange. In recent years, several cases have been brought and resolved by the Exchange and other SROs involving allegations of wide-spread market manipulation, much of which was ultimately being conducted by foreign persons and entities using relatively rudimentary technology to access the markets and over which the Exchange and other SROs had no direct jurisdiction. In each case, the conduct involved a pattern of disruptive quoting and trading activity indicative of manipulative layering [6] or spoofing.[7]

The Exchange and other SROs were able to identify the disruptive quoting and trading activity in real-time or near real-time; nonetheless, the parties responsible for such conduct or responsible for their customers' conduct continued the disruptive quoting and trading activity on the Exchange and other exchanges during the entirety of the subsequent lengthy investigation and enforcement process. To supplement other Exchange Rules on which it may already rely to stop such activity from continuing, the Exchange believes that it should have additional authority to initiate expedited suspension proceedings in order to stop behavior from continuing on the Exchange if a member organization or a person associated with its member organization is engaging in or facilitating disruptive quoting and trading activity and the member organization or associated person has received sufficient notice with an opportunity to respond, but such activity has not ceased. The following examples involving the Exchange's affiliates the New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), are instructive regarding the rationale for the proposed rule change.

In July 2012, Biremis Corp. (formerly Swift Trade Securities USA, Inc.) (''Biremis'') and its CEO were barred from the securities industry for, among other things, supervisory violations related to a failure by Biremis to detect and prevent disruptive and allegedly manipulative trading activities, including layering, short sale violations, and anti-money laundering violations.[8] Biremis' sole business was providing trade execution services via a proprietary day trading platform and order management system to day traders located in foreign jurisdictions. Thus, the disruptive and allegedly manipulative trading activity introduced by Biremis to U.S. markets originated directly or indirectly from its foreign clients. The pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the NYSE, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008. Although Biremis and its principals were on notice of the disruptive and allegedly manipulative quoting and trading activity that was occurring, Biremis took little to no action to attempt to supervise or prevent such quoting and trading activity until at least 2009. Even when it put some controls in place, they were deficient and the pattern of disruptive and allegedly manipulative trading activity continued to occur. As noted above, the final resolution of the enforcement action to bar the firm and its CEO from the industry was not concluded until 2012, four years after the disruptive and allegedly manipulative trading activity was first identified.

In September of 2012, Hold Brothers On-Line Investment Services, Inc. (''Hold Brothers'') settled a regulatory action in connection with its provision of a trading platform, trade software and trade execution, support and clearing services for day traders.[9] Many traders using the firm's services were located in foreign jurisdictions. Hold Brothers ultimately settled the action with FINRA and several exchanges, including NYSE Arca, for a total monetary fine of $3.4 million. In a separate action, the Firm settled with the Commission for a monetary fine of $2.5 million.[10] Among the alleged violations in the case were disruptive and allegedly manipulative quoting and trading activity, including spoofing, layering, wash trading, and pre-arranged trading. Through its conduct and insufficient procedures and controls, Hold Brothers also allegedly committed anti-money laundering violations by failing to detect and report manipulative and suspicious trading activity. Hold Brothers was alleged to have not only provided foreign traders with access to the U.S. markets to engage in such activities, but that its principals also owned and funded foreign subsidiaries that engaged in the disruptive and allegedly manipulative quoting and trading activity. Although the pattern of disruptive and allegedly manipulative quoting and trading activity was identified in 2009, as noted above, the enforcement action was not concluded until 2012. Thus, although disruptive and allegedly manipulative quoting and trading was promptly detected, it continued for several years. The Exchange also notes that criminal proceedings were initiated against Navinder Singh Sarao for manipulative trading activity, including forms of layering and spoofing in the futures markets, that were identified as a contributing factor to the ''Flash Crash'' of 2010, and yet continued through

[5] 15 U.S.C. 78f(b)(1).

[6] ''Layering'' can include a form of market manipulation in which multiple, non-bona fide limit orders are entered on one side of the market at various price levels in order to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-bona fide orders are cancelled.

[7] ''Spoofing'' can include a form of market manipulation that involves the market manipulator placing non-bona fide orders that are intended to trigger some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading bona fide orders.

[8] *See Biremis Corp. and Peter Beck,* FINRA Letter of Acceptance, Waiver and Consent No. 2010021162202, July 30, 2012.

[9] *See Hold Brothers On-Line Investment Services, LLC,* FINRA Letter of Acceptance, Waiver and Consent No. 20100237710001, September 25, 2012.

[10] *In the Matter of Hold Brothers On-Line Investment Services, LLC,* Exchange Act Release No. 67924, September 25, 2012.

2015. In November 2016, Mr. Sarao pled guilty to one count each of wire fraud and spoofing.[11]

The Exchange believes that the activities described in the cases above provide justification for the proposed rule change, which is described below.

Proposed Rule Change

Proposed Rule 5220

The Exchange proposes to adopt new Rule 5220 of the Exchange's Equities Rules to define and prohibit disruptive quoting and trading activity on the Exchange. Proposed Rule 5220(a) would prohibit member organizations and covered persons [12] from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 5220(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes, that with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

The Exchange proposes to adopt Rule 5220(b)(1) and (2) providing additional details regarding disruptive quoting and trading activity. Proposed Rule 5220(b)(1) would describe disruptive quoting and trading activity containing many of the elements indicative of layering. For purposes of the proposed Rule, disruptive quoting and trading activity would include a frequent pattern in which the following facts are present:

- A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders'') (proposed Rule 5220(b)(1)(A)); and
- following the entry of the Displayed Orders, the level of supply and demand for the security changes (proposed Rule 5220(b)(1)(B)); and
- the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed (proposed Rule 5220(b)(1)(C)); and
- following the execution of the Contra-Side Orders, the party cancels the Displayed Orders (proposed Rule 5220(b)(1)(D)).

Proposed Rule 5220(b)(2) would describe disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present:

- A party narrows the spread for a security by placing an order inside the national best bid or offer (proposed Rule 5220(b)(2)(A)); and
- the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(2)(A) that narrowed the spread (proposed Rule 5220(b)(2)(B)).

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described above and with the rules of other SROs.[13]

Proposed Rule 5220(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 5220(b)(1)(A)–(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange also proposes to make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges. The Exchange believes that this authority is necessary to address market participants who would otherwise seek to avoid the prohibitions of the proposed Rule by spreading their activity amongst various execution venues.

Proposed Rule 996NY

The Exchange proposes to adopt a new Rule 996NY of the Options Rules that would be substantially the same as proposed Rule 5220 and would apply to NYSE Amex Options.

Like its equities counterpart, proposed Rule 996NY would define and prohibit disruptive quoting and trading activity on the Exchange. Proposed Rule 996NY(a) would prohibit ATP Holders or associated persons of ATP Holders [14] from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 996NY(b)(1) and (2), including acting in concert with other persons to effect such activity. Proposed Rule 996NY(b)(1) would describe disruptive quoting and trading activity containing many of the elements indicative of layering. For purposes of the proposed Rule, disruptive quoting and trading activity would include a frequent pattern in which the following facts are present:

- A party enters multiple limit orders on one side of the market at various price levels (the ''Displayed Orders'') (proposed Rule 996NY(b)(1)(A)); and
- following the entry of the Displayed Orders, the level of supply and demand for the security changes (proposed Rule 996NY(b)(1)(B)); and
- the party enters one or more orders on the opposite side of the market of the Displayed Orders (the ''Contra-Side Orders'') that are subsequently executed (proposed Rule 996NY(b)(1)(C)); and
- following the execution of the Contra-Side Orders, the party cancels the Displayed Orders (proposed Rule 996NY(b)(1)(D)).

Proposed Rule 996NY(b)(2) would describe disruptive quoting and trading activity containing many of the elements indicative of spoofing and would describe disruptive quoting and trading activity as a frequent pattern in which the following facts are present:

- A party narrows the spread for a security by placing an order inside the national best bid or offer (proposed Rule 996NY(b)(2)(A)); and

[11] The plea agreement in *United States* v. *Navinder Singh Sarao,* Docket Number: 1:15–CR–00075–1 (N.D. Ill.), is available at *https://www.justice.gov/criminal-fraud/file/910196/download.*

[12] Rule 9120(g) defines ''covered person'' to include a member, principal executive, approved person, registered or non-registered employee of a member organization or an ATP Holder, or other person (excluding a member organization) subject to the jurisdiction of the Exchange. Rule 2(b)—Equities defines ''member organization'' as a registered broker or dealer (unless exempt pursuant to the Act) that is a member of FINRA or another registered securities exchange.

[13] *See, e.g.,* BATS Rule 12.15; NASDAQ Rule 2170. *See generally* note 4, *supra.*

[14] On the NYSE Amex Options market, a permit holder is known as an ''Amex Trading Permit Holder'' or ''ATP Holder,'' which is defined in Rule 900.2NY(5) as a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. *See also* Rule 900.2NY(4) (defining ''ATP'' as a permit issued by NYSE MKT for effecting securities transactions on the Exchange's Trading Facilities, defined in Rule 900.2NY(81) as, among places, the Exchange's facilities for the trading of options at 11 Wall Street, New York, NY). An ATP Holder must be registered as a broker or dealer.

• the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in proposed (b)(2)(A) that narrowed the spread (proposed Rule 996NY(b)(2)(B)).

As with proposed Rule 5220, the Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in Rule 996NY are consistent with the activities that have been identified and described in the client access cases described above and with the rules of other SROs.[15]

Proposed Rule 996NY(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. The proposed Rule would also make clear that disruptive quoting and trading activity includes a pattern or practice in which some portion of the disruptive quoting and trading activity is conducted on the Exchange and the other portions of the disruptive quoting and trading activity are conducted on one or more other exchanges.

Proposed Rule 9560

The Exchange proposes a new Rule 9560 for its Code of Procedure that would set forth procedures for issuing suspension orders, immediately prohibiting a member organization or covered person from conducting continued disruptive quoting and trading activity on the Exchange. Importantly, these procedures would also provide the Exchange the authority to order a member organization or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity.

Under proposed paragraph (a)(1) of Rule 9560, with the prior written authorization of the Chief Regulatory Officer (''CRO'') or such other senior officers as the CRO may designate, the Exchange's Enforcement department may initiate an expedited suspension proceeding with respect to alleged violations of Rule 5220 or Rule 996NY (Disruptive Quoting and Trading Activity Prohibited).

Proposed paragraph (a) would also set forth the requirements for notice ((a)(2)) and service of such notice ((a)(3)) pursuant to the Rule, including the required method of service and the content of notice.

Proposed paragraph (b) of Rule 9560 would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers. The proposed provision is consistent with current Rule 9231(b), which governs the appointment of a hearing panel or extended hearing panel to conduct disciplinary proceedings. The Exchange's Rules provide for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned in accordance with Rules [sic] 9233(a). In addition to recusal initiated by such a Hearing Officer, a party to the proceeding will be permitted to file a motion to disqualify a Hearing Officer. However, due to the compressed schedule pursuant to which the process would operate under Rule 9560, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof. Pursuant to existing Rule 9233(c), a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer based on a prompt investigation. The applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 9231(b). If the Chief Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will proceed with the hearing.

Under paragraph (c)(1) of the proposed Rule, the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.

Under paragraph (c)(2) of the proposed Rule, a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Under the proposed Rule, service shall be made by personal service or overnight commercial courier and shall be effective upon service.

Proposed paragraph (c) would also govern how the hearing is conducted, including the authority of Hearing Officers ((c)(3), witnesses ((c)(4)), additional information that may be required by the Hearing Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed paragraph (c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. Finally, as proposed, if the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under paragraph (d)(1) of the proposed Rule, the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed paragraph (d)(2) would also describe the content, scope and form of a suspension order. As proposed, a suspension order shall be limited to ordering a Respondent to cease and desist from violating proposed Rule 5220, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of proposed Rule 5220 ((d)(2)(A)). Under the proposed rule, a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order ((d)(2)(B)). The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from

[15] *See, e.g.,* BATS Rule 12.15; NASDAQ Rule 2170; BOX Options Exchange LLC Rule 3220. *See generally* note 3, *supra.*

((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)).

As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below.

Finally, paragraph (d)(4) would require service of the Hearing Panel's decision and any suspension order consistent with other portions of the proposed rule related to service.

Proposed paragraph (e) of Rule 9560 would provide that at any time after the Hearing Officers served the Respondent with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. If any part of a suspension order is modified, set aside, limited, or revoked, proposed paragraph (e) of Rule 9560 provides the Hearing Panel discretion to leave the cease and desist part of the order in place. For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel is permitted to modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension—for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed paragraph (f) would describe the call for review process by the Exchange Board of Directors. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with Rule 9310 (Review by Exchange Board of Directors), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

Finally, proposed paragraph (g) would provide that sanctions issued under the proposed Rule 9560 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

Proposed Amendments to Rule 8313

Finally, the Exchange proposes amendments to Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560. Specifically, the Exchange proposes to amend Rule 8313(a)(3), which provides that the Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant various Exchange Rules, to include a reference to proposed Rule 9560. The Exchange also proposes to include a notice of the initiation of a suspension proceeding served pursuant to proposed Rule 9560 in the definition of ''disciplinary complaint'' under Rule 8313(e)(1). Similarly, the Exchange would include suspension orders issued pursuant to proposed Rule 9560 in the definition of ''disciplinary decision'' under Rule 8313(e)(2). The proposed amendments to Rule 8313 are consistent with the FINRA Rule 8313 and the rules of the other SROs modeled on FINRA Rule 8313.[16]

* * * * *

In summary, proposed Rule 5220 and Rule 996NY, coupled with proposed Rule 9560, would provide the Exchange with another form and means of authority to promptly act to prevent disruptive quoting and trading activity from continuing on the Exchange. The following example illustrates how the proposed rule would operate.

Assume that through its surveillance program, Exchange staff identifies a pattern of potentially disruptive quoting and trading activity. After an initial investigation, the Exchange would contact the member organization or covered person responsible for the orders that caused the activity to request an explanation of the activity as well as any additional relevant information, including the source of the activity. If the Exchange were to continue to see the same pattern from the same member organization or covered person and the source of the activity is the same or has been previously identified as a frequent source of disruptive quoting and trading activity then the Exchange could initiate an expedited suspension proceeding by serving notice on the member organization or covered person that would include details regarding the alleged violations as well as the proposed sanction.

In such a case the proposed sanction would likely be to order the member organization or covered person to cease and desist providing access to the Exchange to the client that is responsible for the disruptive quoting and trading activity and to suspend such member organization or covered person unless and until such action is taken. The member organization or covered person would have the opportunity to be heard in front of a Hearing Panel at a hearing to be conducted within 15 days of the notice. If the Hearing Panel determined that the violation alleged in the notice did not occur or that the conduct or its continuation would not have the potential to result in significant market disruption or other significant harm to investors, then the Hearing Panel would dismiss the suspension order proceeding. If the Hearing Panel determined that the violation alleged in the notice did occur and that the conduct or its continuation is likely to result in significant market disruption or other significant harm to investors, then the Hearing Panel would issue the order including the proposed sanction, ordering the member organization or covered person to cease providing access to the client at issue and suspending such Member unless and until such action is taken.

If such member organization or covered person wished for the suspension to be lifted because the client ultimately responsible for the activity no longer would be provided access to the Exchange, then such member organization or covered person could apply to the Hearing Panel to have the order modified, set aside, limited or revoked. The Exchange notes that the issuance of a suspension order would not alter the Exchange's ability to further investigate the matter and/or later sanction the member or member organization pursuant to the Exchange's standard disciplinary process for supervisory violations or other violations of Exchange rules or the Act.

The Exchange reiterates that it already has broad authority to take action

[16] *See* FINRA Rule 8313; BATS Rule 8.18.

against a member organization or covered person in the event that such member organization or covered person is engaging in or facilitating disruptive or manipulative trading activity on the Exchange. For the reasons described above, and in light of recent matters such as the client access cases described above, as well as other cases currently under investigation, the Exchange believes that it is equally important for the Exchange to have this supplemental authority to promptly initiate expedited suspension proceedings against any member organization or covered person who has demonstrated a clear pattern or practice of disruptive quoting and trading activity, as described above, and to take action including ordering such member organization or covered person to terminate access to the Exchange to one or more clients that are [sic] responsible for the violative activity.

The Exchange recognizes that its proposed authority to issue a suspension order is a powerful measure that should be used very cautiously. Consequently, the proposed rules have been designed to ensure that the proceedings are used to address only the most clear and serious types of disruptive quoting and trading activity and that the interests of respondents are protected. For example, to ensure that proceedings are used appropriately and that the decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the CRO or another senior officer of the Exchange to issue written authorization before the Exchange can institute an expedited suspension proceeding. In addition, the rule by its terms is limited to violations of proposed Rule 5220 or Rule 996NY, when necessary to protect investors, other member organizations or covered persons, and the Exchange.

Further, the Exchange believes that the proposed expedited suspension provisions described above that provide the opportunity to respond as well as a Hearing Panel determination prior to taking action will ensure that the Exchange would not utilize its authority in the absence of a clear pattern or practice of disruptive quoting and trading activity. Notwithstanding the adoption of the proposed rules along with existing disciplinary rules in the 9000 series, the Exchange also notes that that pursuant to Rule 9555(a)(2) (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services), if a member organization or covered person cannot continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange may provide written notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof. This ability to impose a temporary restriction upon Members assists the Exchange in maintaining the integrity of the market and protecting investors and the public interest.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Pursuant to the proposal, the Exchange will have a mechanism to promptly initiate expedited suspension proceedings in the event the Exchange believes that it has sufficient proof that a violation of proposed Rule 5220 or 996NY has occurred and is ongoing.

Further, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[19] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules. The Exchange believes that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act because the proposal helps to strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed.

As noted throughout this filing, the Exchange believes that these rule proposals are necessary for the protection of investors rather than allowing disruptive quoting and trading activity to occur for several years. The Exchange believes that the pattern of disruptive and allegedly manipulative quoting and trading activity was widespread across multiple exchanges, and the Exchange, FINRA, and other SROs identified clear patterns of the behavior in 2007 and 2008 in the equities markets.[20] The Exchange believes that this proposal will provide the Exchange with additional means to enforce against such behavior in an expedited manner while providing member organizations or covered person with the necessary due process. The Exchange believes that its proposal is consistent with the Act because it provides the Exchange with the ability to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest from such ongoing behavior.

The Exchange believes that the proposal is also consistent with Section 6(b)(7) of the Act,[21] which requires that the rules of an exchange ''provide a fair procedure for the disciplining of members and persons associated with members . . . and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.'' Finally, the Exchange also believes the proposal is consistent with Sections 6(d)(1) and 6(d)(2) of the Act,[22] which require that the rules of an exchange with respect to a disciplinary proceeding or proceeding that would limit or prohibit access to or membership in the exchange require the exchange to: Provide adequate and specific notice of the charges brought against a member or person associated with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 9560. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other member organizations or covered persons and the Exchange, and even in such cases,

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] *See* Section 3 herein, the Purpose section, for examples of conduct referred to herein.

[21] 15 U.S.C. 78f(b)(7).

[22] 15 U.S.C. 78f(d)(1).

respondents will be afforded due process in connection with the suspension proceedings.

Finally, the Exchange believes that amending Rule 8313 to permit release to the public of suspension notices and orders issued pursuant to proposed Rule 9560 furthers the objectives of Section 6(b)(5) of the Act [23] by providing greater clarity, consistency, and transparency regarding the release of disciplinary complaints, decisions and other information to the public. The Exchange also believes that the proposed rule change promotes greater transparency to the Exchange's disciplinary process by providing greater access to information regarding its disciplinary actions and valuable guidance and information to persons subject to the Exchange's jurisdiction, regulators, and the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic] market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other member organizations or covered persons, and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct. The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing member organizations or covered persons with the necessary due process. Finally, the proposed rule change is designed to enhance the Exchange's rules governing the release of disciplinary complaints, decisions and other information to the public, thereby providing greater clarity and consistency and resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2017–25 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2017–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2017–25 and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

**Eduardo A. Aleman,**

*Assistant Secretary.*

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[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] 15 U.S.C. 78s(b)(2)(B).

[29] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80808; File No. SR–GEMX–2017–20]**

## Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

May 30, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2017, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Schedule of Fees to assess fees for SQF and SQF Purge Ports that members will use to connect to the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes amending the Schedule of Fees to increase fees for Specialized Quote Feed (''SQF'')[3] and SQF Purge[4] Ports that Market Makers utilize to connect to the Exchange.[5] Currently, the Exchange does not charge Market Makers, *i.e.,* Primary Market Makers (''PMMs'') and Competitive Market Makers (''CMM''), a fee for SQF and SQF Purge Ports. The Exchange proposes to begin assessing SQF and SQF Purge Port Fees of $1,250 per port, per month in order to recoup the costs of supporting its architecture. The Exchange also proposes to cap these fees for Market Makers utilizing these ports at $12,500 per month. The Exchange believes that its pricing remains competitive.

A reference to ''Exchange'' is being removed from the Schedule of Fees as the reference is extraneous.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable to increase the SQF and SQF Purge Port fees at this time because the GEMX INET migration is complete and the Exchange desires to recoup costs associated with supporting its architecture. The Exchange initially offered these ports free of cost to aid in the migration of the Exchange's trading system to the INET technology. Today, the Bats BZX Exchange, Inc. (''BATS BZX'') assesses $1,500 to its market makers for Ports with Bulk Quoting Capabilities.[8] Additionally, the Exchange proposes to cap the fees for Market Makers utilizing these ports at $12,500 per month, which will limit the amount of SQF and SQF Purge Ports Fees that Market Makers will pay per month. The Exchange believes that it is reasonable to cap these ports for Market Makers so that the increased costs for SQF and SQF Purge Ports will not exceed $12,500 a month. The Exchange believes that the amount of the proposed cap is reasonable because it will allow Market Makers to cap their costs beyond 10 ports. The Exchange proposes 10 ports because it desires to cap infrastructure costs for Market Makers who incur more significant fees because of the greater amount of ports that these Market Makers access because of their larger market making footprint on the Exchange.

The Exchange believes that it is equitable and not unfairly discriminatory to increase the SQF and SQF Purge Port fees to $1,250 per port, per month because all Market Makers would be uniformly assessed the same SQF and SQF Purge Port Fees. The Exchange will also uniformly apply the proposed $12,500 per month cap to Market Makers utilizing SQF and SQF Purge Ports. No Market Maker who utilizes more than 10 SQF or SQF Purge Ports will be assessed a fee beyond the 10 ports.

Finally, removing the extraneous reference to ''Exchange'' will bring clarity to the rule text.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[9] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed SQF and SQF Purge Port fees will be uniformly assessed to all Market Makers. The fees remain competitive with fees at other markets.[10] The Exchange will also uniformly apply the proposed $12,500 per month cap to Marker Makers utilizing SQF and SQF Purge Ports.

The Exchange operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SQF is an interface that allows market makers to connect and send quotes, sweeps and auction responses into GEMX. Data includes the following: (1) Options Auction Notifications (*e.g.,* opening imbalance, Flash, PIM, Solicitation and Facilitation or other information); (2) Options Symbol Directory Messages; (3) System Event Messages (*e.g.,* start of messages, start of system hours, start of quoting, start of opening); (4) Option Trading Action Messages (*e.g.,* halts, resumes); (5) Execution Messages; and (6) Quote Messages (quote/sweep messages, risk protection triggers or purge notifications).

[4] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the market maker.

[5] The Exchange filed the proposed fee increase on May 17, 2017 (SR–GEMX–2017–19). On May 22, 2017, the Exchange withdrew that filing and submitted this filing.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Bats BZX Options Exchange Fee Schedule. BZX assesses $1,500 for the first 5 ports, per month and $2,000 for 6 or more ports, per month.

[9] 15 U.S.C. 78f(b)(8).

[10] *See* note 8 above.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2017–20 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2017–20. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–GEMX–2017–20, and should be submitted on or before June 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017–11503 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–80816/May 31, 2017]**

## Order Making Fiscal Year 2017 Annual Adjustments to Transaction Fee Rates

**I. Background**

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities (''covered sales'') transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of covered sales transacted by or through any member of the association other than on an exchange.[3]

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate.[4] Specifically, the Commission must adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[5]

The Commission is required to publish notice of the new fee rates under Section 31 not later than 30 days after the date on which an Act making a regular appropriation for the applicable fiscal year is enacted.[6] On May 5, 2017, the President signed into law the ''Consolidated Appropriations Act, 2017,'' which includes a regular appropriation of $1,605,000,000 to the SEC for fiscal year 2017.

**II. Fiscal Year 2017 Annual Adjustment to the Fee Rate**

The new fee rate is determined by (1) subtracting the sum of fees estimated to be collected prior to the effective date of the new fee rate[7] and estimated assessments on security futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2017[8] from an amount equal to the regular appropriation to the Commission for fiscal year 2017, and (2) dividing by the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.[9]

The regular appropriation to the Commission for fiscal year 2017 is $1,605,000,000. The Commission estimates that it will collect $1,189,634,934 in fees for the period prior to the effective date of the new fee rate and $65,181 in assessments on

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] In some circumstances, the SEC also must make a mid-year adjustment to the fee rates applicable under Sections 31(b) and (c).

[5] 15 U.S.C. 78ee(j)(1) (the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.'').

[6] 15 U.S.C. 78ee(g).

[7] The sum of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of covered sales prior to the effective date of the new fee rate. The exchanges and FINRA have provided data on the dollar amount of covered sales through March 2017. To calculate the dollar amount of covered sales from April 2017 to the effective date of the new fee rate, the Commission is using the methodology described in the Appendix A of this order.

[8] The Commission is using the same methodology it has used previously to estimate assessments on security futures transactions to be collected in fiscal year 2017. An explanation of the methodology appears in Appendix A.

[9] To estimate the aggregate dollar amount of covered sales for the remainder of fiscal year 2017 following the effective date of the new fee rate, the Commission is using the methodology described in Appendix A of this order.

round turn transactions in security futures products during all of fiscal year 2017. Using the methodology described in Appendix A, the Commission estimates that the aggregate dollar amount of covered sales for the remainder of fiscal year 2017 to be $17,994,658,216,678.

The uniform adjusted rate is computed by dividing the residual fees to be collected of $415,299,885 by the estimated aggregate dollar amount of covered sales for the remainder of fiscal year 2017 of $17,994,658,216,678; this results in a uniform adjusted rate for fiscal year 2017 of $23.10 per million.[10]

## III. Effective Date of the Uniform Adjusted Rate

Under Section 31(j)(4)(A) of the Exchange Act, the fiscal year 2017 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2016, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2017 is enacted.[11] The regular appropriation to the Commission for fiscal year 2017 was enacted on May 5, 2017, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on July 4, 2017.

## IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,

*It is hereby ordered* that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $23.10 per $1,000,000 effective on July 4, 2017.

By the Commission.

**Eduardo A. Aleman,**

*Assistant Secretary.*

## Appendix A

This appendix provides the methodology for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2017.

[10] Appendix A shows the process of calculating the fiscal year 2017 annual adjustment and includes the data used by the Commission in making this adjustment.

[11] 15 U.S.C. 78ee(j)(4)(A).

Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2017.

To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter (''OTC'') markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2017 (less the sum of fees to be collected during fiscal year 2017 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during all of fiscal year 2017) to the estimated aggregate dollar amount of covered sales for the remainder of the fiscal year following the effective date of the new fee rate.

For 2017, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to March 2017, the last month for which the Commission has data on the dollar volume of covered sales.[12]

The following sections describe this process in detail.

### *A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2017*

First, calculate the average daily dollar amount of covered sales (''ADS'') for each month in the sample (February 2007–March 2017). The monthly total dollar amount of covered sales (exchange plus certain OTC markets) is presented in column C of Table A.

Next, model the monthly change in the natural logarithm of ADS as a first order autoregressive process (''AR(1)''), including monthly indicator variables to control for seasonality.

[12] To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on May 5, 2017. The first business day after this date was May 8, 2017. Data for March 2017 were due from the exchanges on April 14, 2017, while data for April 2017 were due on May 12, 2017. As a result, the Commission used March 2017 and earlier data to forecast volume for April 2017 and later months.

Use the estimated AR(1) model to forecast the monthly change in the log level of ADS. These percent changes can then be applied to obtain forecasts of the total dollar volume of covered sales. The following is a more formal (mathematical) description of the procedure:

1. Begin with the monthly data for total dollar volume of covered sales (column C). The sample spans ten years, from February 2007–March 2017.[13] Divide each month's total dollar volume by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month *t,* calculate Δ LN ADS (shown in column E) as the log growth rate of ADS, that is, the difference between the natural logarithm of ADS in month *t* and its value in the prior month.

3. Estimate the AR(1) model

$$y_t = \beta y_{t-1} + \sum_{m=1}^{12} \alpha_m D_t^m + \varepsilon_t$$

with $D_t^m$ representing monthly indicator variables, $y_t$ representing the log growth rate in ADS (Δ LN ADS), and $\varepsilon_t$ representing the error term for month *t.* The model can be estimated using standard commercially available software. The estimated parameter values are $\hat{\beta} = -0.2768$ and $\hat{\alpha}_1 - \hat{\alpha}_{12}$ as follows:

$\kappa_1$ (JAN) = 0.0636, $\hat{\alpha}_2$ (FEB) = 0.398, $\hat{\alpha}_3$ (MAR) = −0.0118, $\hat{\alpha}_4$ (APR) = 0.0593, $\hat{\alpha}_5$ (MAY) = 0.0388, $\hat{\alpha}_6$ (JUN) = 0.0123, $\hat{\alpha}_7$ (JUL) = −0.0444, $\hat{\alpha}_8$ (AUG) = 0.0029, $\hat{\alpha}_9$ (SEP) = 0.0349, $\hat{\alpha}_{10}$ (OCT) = 0.0474, $\hat{\alpha}_{11}$ (NOV) = −0.0141, $\hat{\alpha}_{12}$ (DEC) = −0.0820. The root-mean spared error (RMSE) of the regression is 0.1171.

4. For the first month calculate the forecasted value of the log growth rate of ADS as

$$\hat{y}_t = \hat{\beta} y_{t-1} + \sum_{m=1}^{12} \hat{\alpha}_m D_{mt}$$

For the next month use the forecasted value of the log growth rate of the first month to calculate the forecast of the next month. This process iterates until a forecast is generated for all remaining months in the fiscal year. These data appear in column F.

[13] Because the model uses a one period lag in the *change* in the log level of average daily sales, two additional months of data are added to the table so that the model is estimated with 120 observations.

5. Assuming that the regression error in the AR(1) model is normally distributed, the expected percentage change in average daily dollar volume from month $t-1$ to month $t$ is then given by the expression $\exp\left(\hat{\beta}y_{t-1}+\frac{1}{2}\sigma^2\right)-1$, where $\sigma$ denotes the root mean squared error of the regression (RMSE).

6. For instance, for April 2017, using the $\hat{\beta}$ parameter and the $\hat{\alpha}_4$ parameter (for April) above, and the change in the log-level ADS from March, 2017, we can estimate the change in the log growth in average daily sales as $\hat{\beta}y_{Mar}+\hat{\alpha}_{Apr} = \left((-0.2768\times 0.0109)-0.0593\right)=-0.0623$ This represents the estimated *change* in log average daily dollar volume for April 2017 relative to March 2017. To estimate the percent change in average daily sales from March 2017 to April 2017, use the formula shown in Step 5, above: $\exp\left(-0.0623+\frac{1}{2}0.1171^2\right)-1=-0.0539$. Apply this estimated percent change in ADS to the ADS for March 2017 to estimate the ADS for April 2017 as $\$289{,}646{,}170{,}197\times(1-0.0539)=\$274{,}021{,}149{,}994$. Multiply this by the 19 trading days in April 2017 to obtain a total dollar volume forecast of $5,206,401,849,893.

7. For May 2017, proceed in a similar fashion. Using the estimates for April 2017 along with the $\hat{\beta}$ parameter and the $\hat{\alpha}_5$ parameter (for May 2017) to generate a forecast for the one-month change in the log level of average daily sales. Convert the estimated log change in average daily sales to estimated percent change in ADS as in step 6, above to obtain a forecast ADS of $291,814,240,988. Multiply this figure by the 22 trading days in May 2017 to obtain a total dollar volume forecast of $6,419,913,301,735.

8. Repeat this procedure for subsequent months.

*B. Using the Forecasts From A To Calculate the New Fee Rate*

1. Use Table A to estimate fees collected for the period October 1, 2016 through July 3, 2017. The projected aggregate dollar amount of covered sales for this period is $54,570,409,807,040. Actual and projected fee collections at the current fee rate of $21.80 per million are $1,189,634,934.

2. Estimate the amount of assessments on security futures products collected from October 1, 2016 through September 30, 2017. First, calculate the average and the standard deviation of the change in log average daily sales, in column E, for the 120 months ending March 2017. The average is 0.001622 and the standard deviation is 0.124325. These are used to estimate an average growth rate in ADS using the formula $\exp\left(0.001622 + \frac{1}{2}0.124325^2\right) - 1$. This results in an average monthly increase of 0.939%. Apply this monthly increase to the last month for which single stock futures' assessments are available, which was $6,271.24, for March 2017. Estimate all subsequent months in fiscal year 2017 by applying the growth rate to the previously estimated monthly value, and sum the results. This totals $65,181 for the entire fiscal year.

3. Subtract the amounts $1,189,634,934 and $65,181 from the target off-setting collection amount set by Congress of $1,605,000,000, leaving $415,299,885 to be collected on dollar volume for the period July 4, 2017 through September 30, 2017.

4. Use Table A to estimate dollar volume for the period July 4, 2017 through September 30, 2017. The estimate is $17,994,658,216,678. Finally, compute the fee rate required to produce the additional $415,299,885 in revenue. This rate is $415,299,885 divided by $17,994,658,216,678 or 0.00002307906.

5. Round the result to the seventh decimal point, yielding a rate of 0.0000231 (or $23.10 per million).

This table summarizes the estimates of the aggregate dollar amount of covered sales, by time period. The figures in this table can be used to determine the new fee rate.

TABLE A—BASELINE ESTIMATE OF THE AGGREGATE DOLLAR AMOUNT OF SALES

| Fee rate calculation | |
|---|---|
| a. Baseline estimate of the aggregate dollar amount of sales, 10/01/2016 to 06/30/2017 ($Millions) | $54,288,056 |
| b. Baseline estimate of the aggregate dollar amount of sales, 07/01/2017 to 07/03/2017 ($Millions) | 282,354 |
| c. Baseline estimate of the aggregate dollar amount of sales, 07/04/2017 to 07/31/2017 ($Millions) | 5,364,725 |
| d. Baseline estimate of the aggregate dollar amount of sales, 08/01/2017 to 09/30/2017 ($Millions) | 12,629,933 |
| e. Estimated collections in assessments on security futures products in fiscal year 2017 ($Millions) | 0.065 |
| f. Implied fee rate (($1,605,000,000 − $21.80 * (a + b) − e)/(c + d) | 23.10 |

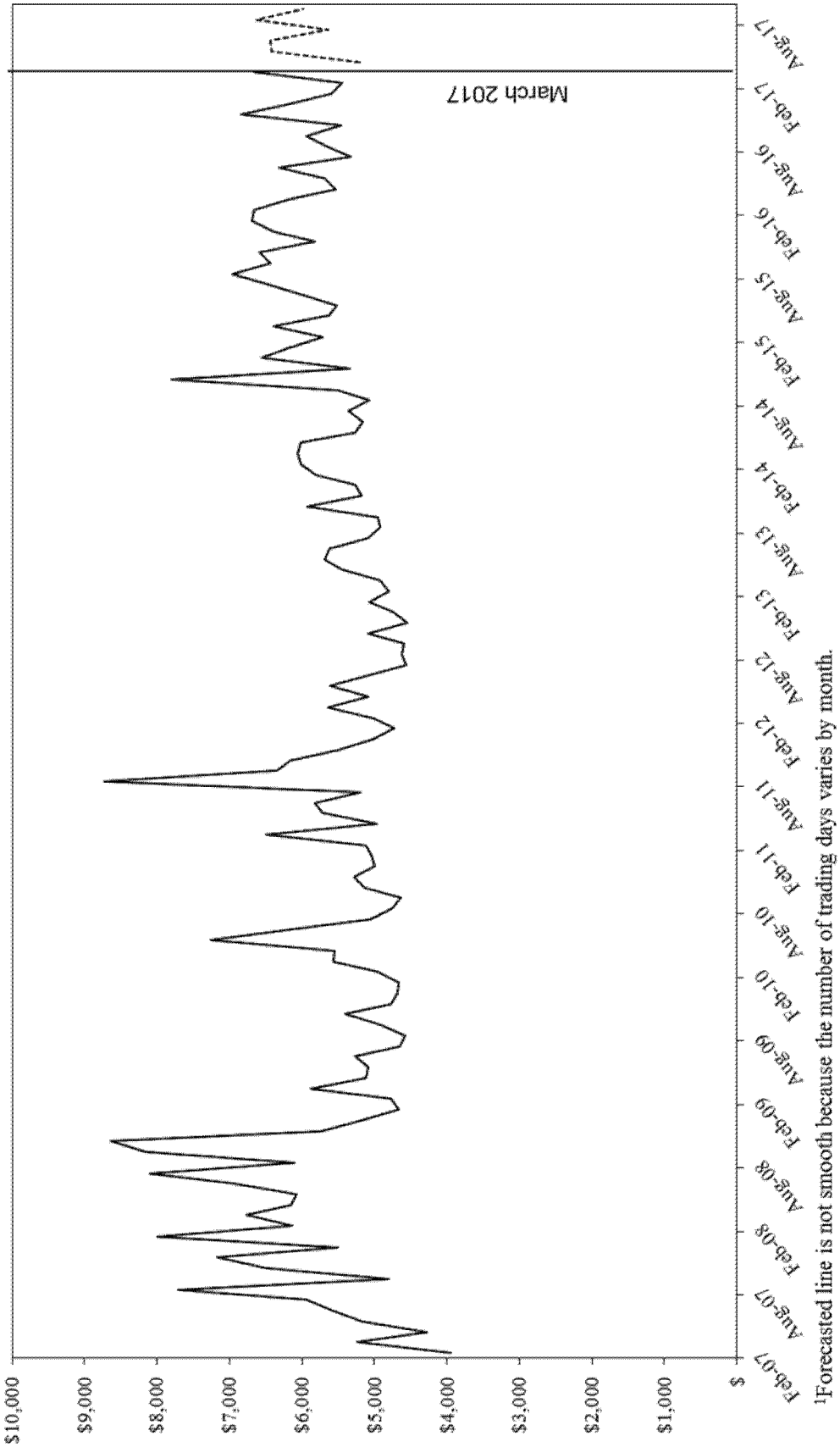
| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
|---|---|---|---|---|---|---|---|
| Month | Number of trading days in month | Total dollar amount of sales | Average daily dollar amount of sales (ADS) | Δ LN ADS | Forecast Δ LN ADS | Forecast average daily dollar amount of sales | Forecast total dollar amount of sales |
| Feb–07 .. | 19 | 3,946,799,860,532 | 207,726,308,449 | #N/A | | | |
| Mar–07 .. | 22 | 5,245,051,744,090 | 238,411,442,913 | 0.13778 | | | |
| Apr–07 .. | 20 | 4,274,665,072,437 | 213,733,253,622 | −0.10927 | | | |
| May–07 | 22 | 5,172,568,357,522 | 235,116,743,524 | 0.09535 | | | |
| Jun–07 .. | 21 | 5,586,337,010,802 | 266,016,048,133 | 0.12347 | | | |
| Jul–07 ... | 21 | 5,938,330,480,139 | 282,777,641,911 | 0.06110 | | | |
| Aug–07 .. | 23 | 7,713,644,229,032 | 335,375,836,045 | 0.17059 | | | |
| Sep–07 .. | 19 | 4,805,676,596,099 | 252,930,347,163 | −0.28214 | | | |
| Oct–07 .. | 23 | 6,499,651,716,225 | 282,593,552,879 | 0.11090 | | | |
| Nov–07 .. | 21 | 7,176,290,763,989 | 341,728,131,619 | 0.19001 | | | |
| Dec–07 .. | 20 | 5,512,903,594,564 | 275,645,179,728 | −0.21490 | | | |
| Jan–08 .. | 21 | 7,997,242,071,529 | 380,821,051,025 | 0.32322 | | | |
| Feb–08 .. | 20 | 6,139,080,448,887 | 306,954,022,444 | −0.21563 | | | |
| Mar–08 .. | 20 | 6,767,852,332,381 | 338,392,616,619 | 0.09751 | | | |
| Apr–08 .. | 22 | 6,150,017,772,735 | 279,546,262,397 | −0.19104 | | | |
| May–08 | 21 | 6,080,169,766,807 | 289,531,893,657 | 0.03510 | | | |
| Jun–08 .. | 21 | 6,962,199,302,412 | 331,533,300,115 | 0.13546 | | | |
| Jul–08 ... | 22 | 8,104,256,787,805 | 368,375,308,537 | 0.10537 | | | |
| Aug–08 .. | 21 | 6,106,057,711,009 | 290,764,652,905 | −0.23659 | | | |
| Sep–08 .. | 21 | 8,156,991,919,103 | 388,428,186,624 | 0.28959 | | | |
| Oct–08 .. | 23 | 8,644,538,213,244 | 375,849,487,532 | −0.03292 | | | |
| Nov–08 .. | 19 | 5,727,998,341,833 | 301,473,596,939 | −0.22051 | | | |
| Dec–08 .. | 22 | 5,176,041,317,640 | 235,274,605,347 | −0.24793 | | | |
| Jan–09 .. | 20 | 4,670,249,433,806 | 233,512,471,690 | −0.00752 | | | |

| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
|---|---|---|---|---|---|---|---|
| Month | Number of trading days in month | Total dollar amount of sales | Average daily dollar amount of sales (ADS) | Δ LN ADS | Forecast Δ LN ADS | Forecast average daily dollar amount of sales | Forecast total dollar amount of sales |
| Feb–09 .. | 19 | 4,771,470,184,048 | 251,130,009,687 | 0.07274 | | | |
| Mar–09 .. | 22 | 5,885,594,284,780 | 267,527,012,945 | 0.06325 | | | |
| Apr–09 .. | 21 | 5,123,665,205,517 | 243,984,057,406 | −0.09212 | | | |
| May–09 | 20 | 5,086,717,129,965 | 254,335,856,498 | 0.04155 | | | |
| Jun–09 .. | 22 | 5,271,742,782,609 | 239,624,671,937 | −0.05958 | | | |
| Jul–09 ... | 22 | 4,659,599,245,583 | 211,799,965,708 | −0.12343 | | | |
| Aug–09 .. | 21 | 4,582,102,295,783 | 218,195,347,418 | 0.02975 | | | |
| Sep–09 .. | 21 | 4,929,155,364,888 | 234,721,684,042 | 0.07301 | | | |
| Oct–09 .. | 22 | 5,410,025,301,030 | 245,910,240,956 | 0.04657 | | | |
| Nov–09 .. | 20 | 4,770,928,103,032 | 238,546,405,152 | −0.03040 | | | |
| Dec–09 .. | 22 | 4,688,555,303,171 | 213,116,150,144 | −0.11273 | | | |
| Jan–10 .. | 19 | 4,661,793,708,648 | 245,357,563,613 | 0.14088 | | | |
| Feb–10 .. | 19 | 4,969,848,578,023 | 261,570,977,791 | 0.06399 | | | |
| Mar–10 .. | 23 | 5,563,529,823,621 | 241,892,601,027 | −0.07821 | | | |
| Apr–10 .. | 21 | 5,546,445,874,917 | 264,116,470,234 | 0.08790 | | | |
| May–10 | 20 | 7,260,430,376,294 | 363,021,518,815 | 0.31807 | | | |
| Jun–10 .. | 22 | 6,124,776,349,285 | 278,398,924,967 | −0.26541 | | | |
| Jul–10 ... | 21 | 5,058,242,097,334 | 240,868,671,302 | −0.14480 | | | |
| Aug–10 .. | 22 | 4,765,828,263,463 | 216,628,557,430 | −0.10607 | | | |
| Sep–10 .. | 21 | 4,640,722,344,586 | 220,986,778,314 | 0.01992 | | | |
| Oct–10 .. | 21 | 5,138,411,712,272 | 244,686,272,013 | 0.10187 | | | |
| Nov–10 .. | 21 | 5,279,700,881,901 | 251,414,327,710 | 0.02713 | | | |
| Dec–10 .. | 22 | 4,998,574,681,208 | 227,207,940,055 | −0.10124 | | | |
| Jan–11 .. | 20 | 5,043,391,121,345 | 252,169,556,067 | 0.10424 | | | |
| Feb–11 .. | 19 | 5,114,631,590,581 | 269,191,136,346 | 0.06532 | | | |
| Mar–11 .. | 23 | 6,499,355,385,307 | 282,580,668,926 | 0.04854 | | | |
| Apr–11 .. | 20 | 4,975,954,868,765 | 248,797,743,438 | −0.12732 | | | |
| May–11 | 21 | 5,717,905,621,053 | 272,281,220,050 | 0.09020 | | | |
| Jun–11 .. | 22 | 5,820,079,494,414 | 264,549,067,928 | −0.02881 | | | |
| Jul–11 ... | 20 | 5,189,681,899,635 | 259,484,094,982 | −0.01933 | | | |
| Aug–11 .. | 23 | 8,720,566,877,109 | 379,155,081,613 | 0.37925 | | | |
| Sep–11 .. | 21 | 6,343,578,147,811 | 302,075,149,896 | −0.22727 | | | |
| Oct–11 .. | 21 | 6,163,272,963,688 | 293,489,188,747 | −0.02884 | | | |
| Nov–11 .. | 21 | 5,493,906,473,584 | 261,614,593,980 | −0.11497 | | | |
| Dec–11 .. | 21 | 5,017,867,255,600 | 238,946,059,790 | −0.09063 | | | |
| Jan–12 .. | 20 | 4,726,522,206,487 | 236,326,110,324 | −0.01103 | | | |
| Feb–12 .. | 20 | 5,011,862,514,132 | 250,593,125,707 | 0.05862 | | | |
| Mar–12 .. | 22 | 5,638,847,967,025 | 256,311,271,228 | 0.02256 | | | |
| Apr–12 .. | 20 | 5,084,239,396,560 | 254,211,969,828 | −0.00822 | | | |
| May–12 | 22 | 5,611,638,053,374 | 255,074,456,972 | 0.00339 | | | |
| Jun–12 .. | 21 | 5,121,896,896,362 | 243,899,852,208 | −0.04480 | | | |
| Jul–12 ... | 21 | 4,567,519,314,374 | 217,500,919,732 | −0.11455 | | | |
| Aug–12 .. | 23 | 4,621,597,884,730 | 200,939,038,467 | −0.07920 | | | |
| Sep–12 .. | 19 | 4,598,499,962,682 | 242,026,313,825 | 0.18604 | | | |
| Oct–12 .. | 21 | 5,095,175,588,310 | 242,627,408,967 | 0.00248 | | | |
| Nov–12 .. | 21 | 4,547,882,974,292 | 216,565,855,919 | −0.11363 | | | |
| Dec–12 .. | 20 | 4,744,922,754,360 | 237,246,137,718 | 0.09120 | | | |
| Jan–13 .. | 21 | 5,079,603,817,496 | 241,885,896,071 | 0.01937 | | | |
| Feb–13 .. | 19 | 4,800,663,527,089 | 252,666,501,426 | 0.04360 | | | |
| Mar–13 .. | 20 | 4,917,701,839,870 | 245,885,091,993 | −0.02721 | | | |
| Apr–13 .. | 22 | 5,451,358,637,079 | 247,789,028,958 | 0.00771 | | | |
| May–13 | 22 | 5,681,788,831,869 | 258,263,128,721 | 0.04140 | | | |
| Jun–13 .. | 20 | 5,623,545,462,226 | 281,177,273,111 | 0.08501 | | | |
| Jul–13 ... | 22 | 5,083,861,509,754 | 231,084,614,080 | −0.19620 | | | |
| Aug–13 .. | 22 | 4,925,611,193,095 | 223,891,417,868 | −0.03162 | | | |
| Sep–13 .. | 20 | 4,959,197,626,713 | 247,959,881,336 | 0.10211 | | | |
| Oct–13 .. | 23 | 5,928,804,028,970 | 257,774,088,216 | 0.03882 | | | |
| Nov–13 .. | 20 | 5,182,024,612,049 | 259,101,230,602 | 0.00514 | | | |
| Dec–13 .. | 21 | 5,265,282,994,173 | 250,727,761,627 | −0.03285 | | | |
| Jan–14 .. | 21 | 5,808,700,114,288 | 276,604,767,347 | 0.09822 | | | |
| Feb–14 .. | 19 | 6,018,926,931,054 | 316,785,627,950 | 0.13564 | | | |
| Mar–14 .. | 21 | 6,068,617,342,988 | 288,981,778,238 | −0.09186 | | | |
| Apr–14 .. | 21 | 6,013,948,953,528 | 286,378,521,597 | −0.00905 | | | |
| May–14 | 21 | 5,265,594,447,318 | 250,742,592,729 | −0.13289 | | | |
| Jun–14 .. | 21 | 5,159,506,989,669 | 245,690,809,032 | −0.02035 | | | |
| Jul–14 ... | 22 | 5,364,099,567,460 | 243,822,707,612 | −0.00763 | | | |
| Aug–14 .. | 21 | 5,075,332,147,677 | 241,682,483,223 | −0.00882 | | | |
| Sep–14 .. | 21 | 5,507,943,363,243 | 262,283,017,297 | 0.08180 | | | |
| Oct–14 .. | 23 | 7,796,638,035,879 | 338,984,262,430 | 0.25653 | | | |
| Nov–14 .. | 19 | 5,340,847,027,697 | 281,097,211,984 | −0.18725 | | | |
| Dec–14 .. | 22 | 6,559,110,068,128 | 298,141,366,733 | 0.05887 | | | |
| Jan–15 .. | 20 | 6,185,619,541,044 | 309,280,977,052 | 0.03668 | | | |
| Feb–15 .. | 19 | 5,723,523,235,641 | 301,238,065,034 | −0.02635 | | | |
| Mar–15 .. | 22 | 6,395,046,297,249 | 290,683,922,602 | −0.03566 | | | |
| Apr–15 .. | 21 | 5,625,548,298,004 | 267,883,252,286 | −0.08169 | | | |
| May–15 | 20 | 5,521,351,972,386 | 276,067,598,619 | 0.03009 | | | |
| Jun–15 .. | 22 | 6,005,521,460,806 | 272,978,248,218 | −0.01125 | | | |
| Jul–15 ... | 22 | 6,493,670,315,390 | 295,166,832,518 | 0.07815 | | | |
| Aug–15 .. | 21 | 6,963,901,249,270 | 331,614,345,203 | 0.11643 | | | |

| (A) | (B) | (C) | (D) | (E) | (F) | (G) | (H) |
|---|---|---|---|---|---|---|---|
| Month | Number of trading days in month | Total dollar amount of sales | Average daily dollar amount of sales (ADS) | Δ LN ADS | Forecast Δ LN ADS | Forecast average daily dollar amount of sales | Forecast total dollar amount of sales |
| Sep–15 .. | 21 | 6,434,496,770,897 | 306,404,608,138 | −0.07907 | | | |
| Oct–15 .. | 22 | 6,592,594,708,082 | 299,663,395,822 | −0.02225 | | | |
| Nov–15 .. | 20 | 5,822,824,015,945 | 291,141,200,797 | −0.02885 | | | |
| Dec–15 .. | 22 | 6,384,337,478,801 | 290,197,158,127 | −0.00325 | | | |
| Jan–16 .. | 19 | 6,696,059,796,055 | 352,424,199,792 | 0.19428 | | | |
| Feb–16 .. | 20 | 6,659,878,908,747 | 332,993,945,437 | −0.05671 | | | |
| Mar–16 .. | 22 | 6,161,943,754,542 | 280,088,352,479 | −0.17302 | | | |
| Apr–16 .. | 21 | 5,541,076,988,322 | 263,860,808,968 | −0.05968 | | | |
| May–16 | 21 | 5,693,520,415,112 | 271,120,019,767 | 0.02714 | | | |
| Jun–16 .. | 22 | 6,317,212,852,759 | 287,146,038,762 | 0.05743 | | | |
| Jul–16 ... | 20 | 5,331,797,261,269 | 266,589,863,063 | −0.07428 | | | |
| Aug–16 .. | 23 | 5,635,976,607,786 | 245,042,461,208 | −0.08428 | | | |
| Sep–16 .. | 21 | 5,942,072,286,976 | 282,955,823,189 | 0.14386 | | | |
| Oct–16 .. | 21 | 5,460,906,573,682 | 260,043,170,175 | −0.08444 | | | |
| Nov–16 .. | 21 | 6,845,287,809,886 | 325,966,086,185 | 0.22595 | | | |
| Dec–16 .. | 21 | 6,208,579,880,985 | 295,646,660,999 | −0.09763 | | | |
| Jan–17 .. | 20 | 5,598,200,907,603 | 279,910,045,380 | −0.05470 | | | |
| Feb–17 .. | 19 | 5,443,426,609,533 | 286,496,137,344 | 0.02326 | | | |
| Mar–17 .. | 23 | 6,661,861,914,530 | 289,646,170,197 | 0.01094 | | | |
| Apr–17 .. | 19 | | | | −0.0623 | 274,021,149,994 | 5,206,401,849,893 |
| May–17 | 22 | | | | 0.0561 | 291,814,240,988 | 6,419,913,301,735 |
| Jun–17 .. | 22 | | | | −0.0032 | 292,885,318,930 | 6,443,477,016,454 |
| Jul–17 ... | 20 | | | | −0.0435 | 282,353,942,739 | 5,647,078,854,776 |
| Aug–17 .. | 23 | | | | 0.0149 | 288,570,007,274 | 6,637,110,167,312 |
| Sep–17 .. | 20 | | | | 0.0308 | 299,641,156,866 | 5,992,823,137,329 |

**BILLING CODE 8011–01–P**

**Figure A.**
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)




[1]Forecasted line is not smooth because the number of trading days varies by month.

[FR Doc. 2017–11555 Filed 6–2–17; 8:45 am]

**BILLING CODE 8011–01–C**

## SMALL BUSINESS ADMINISTRATION

### National Small Business Development Centers Advisory Board

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal Advisory Committee meetings.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time and agenda for July and August meetings of the Federal Advisory Committee for the Small Business Development Centers Program. The meetings will be open to the public; however, advance notice of attendance is required.

**DATES:**

Tuesday, July 18, 2017, at 1:00 p.m. EST
Tuesday, August 15, 2017, at 1:00 p.m. EST

**ADDRESSES:** All meetings will be held via conference call.

**FOR FURTHER INFORMATION CONTACT:** Monika Nixon, Office of Small Business Development Center, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416; *monika.nixon@.sba.gov.*

If anyone wishes to be a listening participant or would like to request accommodations, please contact Monika Nixon at the information above.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of the meetings is to discuss the following issues pertaining to the SBDC Program:

SBA Update
Annual Meetings
Board
Assignments
Member Roundtable

**Richard Kingan,**

*Acting White House Liaison.*

[FR Doc. 2017–11490 Filed 6–2–17; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #15142 and #15143]**

### Nevada Disaster #NV–00046

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Nevada dated 05/25/2017.

*Incident:* Severe Winter Storms, Flooding and Mudslides.

*Incident Period:* 02/05/2017 through 02/22/2017.

**DATES:** *Effective Date:* 05/25/2017.

*Physical Loan Application Deadline Date:* 07/24/2017.

*Economic Injury (EIDL) Loan Application Deadline Date:* 02/26/2018.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Elko

*Contiguous Counties:*

Nevada: Eureka, Humboldt, Lander, White Pine
Idaho: Cassia, Owyhee, Twin Falls
Utah: Box Elder, Tooele

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.750 |
| Homeowners Without Credit Available Elsewhere | 1.875 |
| Businesses With Credit Available Elsewhere | 6.300 |
| Businesses Without Credit Available Elsewhere | 3.150 |
| Non-Profit Organizations With Credit Available Elsewhere | 2.500 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.500 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 3.150 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.500 |

The number assigned to this disaster for physical damage is 15142B and for economic injury is 151430.

The States which received an EIDL Declaration # are Nevada, Idaho, Utah.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 25, 2017.

**Linda E. McMahon,**

*Administrator.*

[FR Doc. 2017–11566 Filed 6–2–17; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 10015]**

### Biodiversity Beyond National Jurisdiction Public Meeting

**AGENCY:** Department of State.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Department of State will hold an information session regarding issues related to a July United Nations meeting concerning marine biodiversity in areas beyond national jurisdiction.

**DATES:** The meeting will be held on June 13, 2017, 2:00 p.m.–3:30 p.m.

**ADDRESSES:** The meeting will be held at the Harry S. Truman Main State Building, Room 3940, 2201 C Street NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** If you would like to participate in this meeting, please send your (1) name, (2) organization/affiliation, (3) email address, and (4) phone number, as well as any requests for reasonable accommodation, to Elizabeth Kim at *KimEAB@state.gov* or 202–647–4824. This information is being collected pursuant to 22 U.S.C. 2651a and 22 U.S.C. 4802 for the purpose of screening and pre-clearing participants to enter the host venue at the U.S. Department of State, in line with standard security procedures for events of this size. The Department of State will use this information consistent with the routine uses set forth in the System of Records Notices for Protocol Records (STATE-33) and Security Records (State–36). Provision of this information is voluntary, but failure to provide accurate information may impede your ability to register for the event.

**SUPPLEMENTARY INFORMATION:** In July 2017, the United States will participate in a two-week meeting of the United Nations General Assembly (UNGA) Preparatory Committee on the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction. This fourth meeting of the Preparatory Committee will end a two-year process established by the UNGA to make substantive recommendations on the elements of a draft text of a legally binding instrument on the conservation and sustainable use

of marine biological diversity in areas beyond national jurisdiction.

We will provide a brief overview of topics to be discussed at the upcoming UN meeting and will listen to your comments, concerns, and questions about these issues. The information obtained from this meeting and any subsequent related meetings will be used to help us prepare for U.S. participation in international meetings and specifically U.S. participation in the July meeting of the Preparatory Committee. Documents and other information related to the Preparatory Committee can be found on this United Nations Web site: *www.un.org/depts/los/biodiversity/prepcom.htm.*

*Reasonable Accommodation:* This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other reasonable accommodation should be directed to (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date. Requests received after that date will be considered but might not be possible to fulfill.

**Chever Voltmer,**

*Acting Director, Office of Ocean and Polar Affairs, Bureau of Oceans and International, Environmental and Scientific Affairs, Department of State.*

[FR Doc. 2017–11480 Filed 6–2–17; 8:45 am]

**BILLING CODE 4710–09–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. EP 682 (Sub-No. 8)]**

## 2016 Tax Information for use In the Revenue Shortfall Allocation Method

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice.

**SUMMARY:** The Board is publishing, and providing the public an opportunity to comment on, the 2016 weighted average state tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

**DATES:** Comments are due by July 5, 2017. If any comment opposing AAR's calculation is filed, AAR's reply will be due by July 25, 2017. If no comments are filed by the due date, AAR's calculation of the 2016 weighted average state tax rates will be automatically adopted by the Board, effective July 6, 2017.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site at *http://www.stb.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies referring to Docket No. EP 682 (Sub-No. 8) to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Jonathon Binet, (202) 245–0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method,* EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.,* earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards–Taxes in RSAM,* slip op. at 1. In *Simplified Standards–Taxes in RSAM,* slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5–6.

In *Annual Submission of Tax Information for Use in the Revenue Shortfall Allocation Method,* EP 682 (STB served Feb. 26, 2010), the Board adopted rules to require AAR—a national trade association—to annually calculate and submit to the Board the weighted average state tax rate for each Class I railroad. *See* 49 CFR 1135.2(a). On May 25, 2017, AAR filed its calculation of the weighted average state tax rates for 2016, listed below for each Class I railroad:

WEIGHTED AVERAGE STATE TAX RATES
[In percent]

| Railroad | 2016 | 2015 | % Change |
|---|---|---|---|
| BNSF Railway Company | 5.288 | 5.271 | 0.017 |
| CSX Transportation, Inc. | 5.160 | 5.247 | −0.087 |
| Grand Trunk Corporation | 7.761 | 7.767 | −0.006 |
| The Kansas City Southern Railway | 5.447 | 5.430 | 0.017 |
| Norfolk Southern Combined | 5.410 | 5.501 | −0.091 |
| Soo Line Corporation | 8.071 | 8.083 | −0.012 |
| Union Pacific Railroad Company | 5.636 | 5.655 | −0.019 |

Any party wishing to comment on AAR's calculation of the 2016 weighted average state tax rates should file a comment by July 5, 2017. *See* 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due by July 25, 2017. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 5, 2017, AAR's submitted weighted average state tax rates will be automatically adopted by the Board, effective July 6, 2017. *Id.*

Decided: May 31, 2017.

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g, CSX Transp., Inc.* v. *STB,* 584 F.3d 1076 (D.C. Cir. 2009).

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Rena Laws-Byrum,**

*Clearance Clerk.*

[FR Doc. 2017–11565 Filed 6–2–17; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Opportunity for Public Comment on a Land Use Change From Aeronautical to Non-Aeronautical Use for Revenue Generation of 5 Acres of Airport Land at Nantucket Memorial Airport, Nantucket, MA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Request for public comments.

**SUMMARY:** Notice is being given that the FAA is considering a request from the Town of Nantucket in Nantucket, MA, to change the current land use from aeronautical use to non-aeronautical use of a 5 acre parcel of land. The parcel is located in the northwestern quadrant of the airport and is adjacent to other non-airport parcels used for industrial and/or commercial use properties. The parcel is currently identified as surplus for non-aeronautical use on the airport's September 16, 2015 Airport Layout Plan. The parcel will be used to generate non-aeronautical revenue through the lease of land for industrial/commercial use. All revenues through the leasing of the parcel will continue to be subject to the FAA's revenue-use policy and dedicated to the maintenance and operation of Nantucket Memorial Airport.

**DATES:** Comments must be received on or before July 5, 2017.

**ADDRESSES:** You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jorge E. Panteli, Compliance and Land Use Specialist, Federal Aviation Administration New England Region Airports Division, 1200 District Avenue, Burlington, Massachusetts 01803. Telephone: 781–238–7618.

Issued in Burlington, Massachusetts, on May 24, 2017.

**Mary T. Walsh,**

*Manager, ANE–600.*

[FR Doc. 2017–11478 Filed 6–2–17; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Mobile and Baldwin Counties, Alabama

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Intent to prepare a Supplemental Draft Environmental Impact Statement.

**SUMMARY:** The FHWA in cooperation with the Alabama Department of Transportation (ALDOT), will prepare a limited scope Supplemental Draft Environmental Impact Statement (SDEIS) for the I–10 Mobile River Bridge and Bayway Widening project in Mobile and Baldwin Counties, Alabama. The Draft Environmental Impact Statement (DEIS) was approved by FHWA on July 22, 2014. The purpose of the SDEIS is to evaluate new information regarding environmental impacts and changes in project conditions that have occurred since the July 2014 DEIS.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark D. Bartlett, Division Administrator, Federal Highway Administration, 9500 Wynlakes Place, Montgomery, Alabama 36117; Email: *mark.bartlett@dot.gov;* Telephone: (334) 274–6350.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the ALDOT, will prepare a limited scope SDEIS in accordance with 23 CFR 771.130(f) and 40 CFR 1502.9 for the proposed project which includes increasing the capacity of Interstate Route 10 (I–10) by constructing a new bridge across the Mobile River and increasing the capacity of I–10 across Mobile Bay from four to eight lanes. The DEIS for the project was approved on July 22, 2014 (FHWA–AL–EIS–14–01–D). The DEIS evaluated a wide range of alternatives, including the No Build Alternative and four Build Alternatives. Alternative B was identified as the Preferred Alternative. Public Hearings were held on September 23 and September 29, 2014, following approval of the DEIS.

The purpose of the SDEIS is to identify changes, new information, and activities that have occurred in the project since the July 2014 DEIS. Based on coordination between FHWA and ALDOT, the issues to be addressed in the SDEIS will include, but are not limited to: Refinements in Alternative B', storm surge analysis, tolling as a funding mechanism, Section 4(f) Evaluation, Section 106 consultation, bicycle/pedestrian facilities, threatened and endangered species, ecological resources, hazardous materials, cultural resources surveys, and agency coordination and public outreach activities. The SDEIS will review information from the original DEIS, incorporate new information into the SDEIS, and update the impacts and analyses where changes have occurred since the DEIS was approved. The DEIS is available at: *www.mobileriverbridge.com.*

The SDEIS will follow the same process and format as the original DEIS, except that scoping is not required. Following approval of the SDEIS, FHWA plans to issue a combined Final Environmental Impact Statement (FEIS)/Record of Decision (ROD).

Public involvement is a critical component of the National Environmental Policy Act (NEPA) project development process and will occur throughout the development of the environmental documents. Environmental documents will be made available for review by resources agencies and the public. Notification of the availability of the SDEIS for public and agency review will be made in the **Federal Register**, the project's Web site (*www.mobileriverbridge.com*), and through other methods to be jointly determined by FHWA and ALDOT. Those methods will identify where interested parties can go to review a copy of the SDEIS. The agency and public comment period on the SDEIS will end no sooner than 45 days after the Notice of Availability is published in the **Federal Register**.

Public Hearing(s) will be held following the availability of the SDEIS and as necessary. The Public Hearing(s) will be held in accessible locations and at convenient times. The Public Hearing(s) will be conducted by ALDOT and announced a minimum of 30 days in advance of the hearings. Individuals will be provided the opportunity to offer official comments by publicly expressing their views to representatives of ALDOT and others in attendance, privately to a court reporter, or by submitting written comments. The

ALDOT will provide FHWA with a transcript of the Public Hearing(s) and copies of submitted written comments.

The SDEIS will comply with other Federal and State requirements including the State Water Quality Certification under Section 401 of the Clean Water Act; protection of water quality under the National Pollutant Discharge Elimination System; protection of threatened and endangered species under Section 7 of the Endangered Species Act; and protection of cultural resources under Section 106 of the National Historic Preservation Act.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from interested parties. Comments or questions concerning this proposed action and the SDEIS should be directed to the FHWA representative at the address above.

**Authority:** 23 U.S.C. 315; 23 CFR 771.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: May 30, 2017.

**Mark D. Bartlett,**

*Division Administrator, Federal Highway Administration, Montgomery, Alabama.*

[FR Doc. 2017–11543 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket no. FHWA–2017–0018]**

### Transportation Asset Management Plan Development Processes Certification and Recertification Guidance; Transportation Asset Management Plan Consistency Determination Guidance

**AGENCY:** Federal Highway Administration, DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The FHWA is seeking comments on two draft documents: (1) Transportation Asset Management Plan Development Processes Certification and Recertification Guidance, and (2) Transportation Asset Management Plan Consistency Determination Guidance. These documents provide implementation guidance on provisions of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Asset Management Final Rule, which requires a State department of transportation (State DOT) to develop and implement a risk-based asset management plan. Under these authorities, FHWA must (1) certify that transportation asset management plan (TAMP) development processes established by a State DOT meet applicable requirements, and (2) make an annual consistency determination, evaluating whether a State DOT has developed and implemented a State-approved TAMP that meets all applicable requirements. This notice announces the availability of these draft documents on the online docket at the docket number for this notice.

**DATES:** Comments must be received on or before July 5, 2017.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit all comments by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.
- *Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice contact Mr. Stephen Gaj, FHWA Office of Infrastructure, (202) 366–1336, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590, or via email at *Stephen.Gaj@dot.gov.* For legal questions, please contact Ms. Janet Myers, FHWA Office of the Chief Counsel, (202) 366–2019, Federal Highway Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, or via email at *Janet.Myers@dot.gov.* Business hours for FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access and Filing

Copies of the proposed Transportation Asset Management Plan Development Processes Certification and Recertification Guidance; and Consistency Determination Guidance are available online for download and public inspection online under the docket at the Federal eRulemaking portal at: *http://www.regulations.gov.* You may also submit or retrieve comments online through the Federal eRulemaking portal. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Publishing Office's Web page at: *https://www.gpo.gov/fdsys/.* Late comments will be considered to the extent practicable.

#### Background

Under the asset management provisions enacted in MAP–21, codified at 23 U.S.C. 119, State DOTs must develop and implement a risk-based TAMP. This TAMP must include all National Highway System (NHS) pavements and bridges, regardless of whether the State or some other entity owns the relevant NHS facility.

The FHWA must take two actions with respect to State DOT asset management activities. The first is TAMP development process certification/recertification. Under 23 U.S.C. 119(e)(6), FHWA must certify at least every 4 years that the State DOT's processes for developing its TAMP are consistent with applicable requirements. The FHWA must also recertify whenever the State amends its TAMP development processes, in accordance with 23 CFR 515.13(c). The second FHWA action, under 23 U.S.C. 119(e)(5), is an annual consistency determination, which evaluates whether the State DOT has developed and implemented a TAMP that is consistent with the requirements of 23 U.S.C. 119. The FHWA adopted the asset management rule, 23 CFR part 515, to implement these and other asset management requirements. The FHWA Division Offices (Divisions) are responsible for making these two decisions on behalf of FWHA.

To assist State DOTs and Divisions with these requirements, the FHWA Office of Asset Management, Pavements, and Construction is seeking comment on the two draft guidance documents announced by this notice. Please note that any comments should be limited to these guidance documents; FHWA is not soliciting further comment on the Asset Management Final Rule.

The Transportation Asset Management Plan Development

Processes Certification and Recertification Guidance provides a framework for Divisions to undertake and complete the process certification for a State DOT's TAMP development processes as outlined in 23 CFR 515.13. The Transportation Asset Management Plan Consistency Determination Guidance assists Divisions on evaluating whether a State DOT has developed and implemented its TAMP in accordance with provisions in 23 CFR 515.13(b). All guidance is subject to change as the state of asset management practices change and the asset management rule is further implemented.

**Authority:** 23 U.S.C. 119; 23 CFR part 515; 49 CFR 1.85.

Issued on: May 26, 2017.

**Walter C. Waidelich, Jr.,**

*Acting Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2017–11529 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Park Service, and National Oceanic Atmospheric Administration National Marine Fisheries Service.

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Park Service, and National Oceanic Atmospheric Administration National Marine Fisheries Service that are final. The actions relate to a proposed highway project, U.S. Route 101 from Post Mile 1.1 to Post Mile 2.2 in the County of Humboldt, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 2, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:**

*For Caltrans:* Sandra Rosas, Environmental Branch Chief, California Department of Transportation, 1656 Union Street, Eureka, CA 95501; or call (707) 441–5730, email *Sandra.Rosas@dot.ca.gov.*

*For U.S. Army Corps of Engineers:* Janelle D. Leeson, Senior Regulatory Project Manager/Caltrans Liaison, U.S. Army Corps of Engineers, 1455 Market Street, 16th Floor, San Francisco, CA 94103 or call (415) 503–6773, email *Janelle.D.Leeson@usace.army.mil.*

*For U.S. Fish and Wildlife Service:* Bruce Bingham, Field Supervisor, Fish and Wildlife Endangered Species Program, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521; or call (707) 822–7201, email *Bruce_Bingham@fws.gov.*

*For National Park Service:* Stephen Bowes, CA Wild and Scenic Rivers Coordinator National Park Service, 1111 Jackson Street, Suite 700, Oakland, CA 94607; or call (510) 817–1451, email *stephen_bowes@nps.gov.*

*For National Oceanic Atmospheric Administration National Marine Fisheries:* Jeffrey Jahn, Supervisory Fish Biologist—South Coast Branch, National Oceanic Atmospheric Administration National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521; or call (707) 825–5173, email *Jeffrey.Jahn@noaa.gov.*

*For the California Department of Parks and Recreation:* Jay Harris, Senior Environmental Scientist, California State Parks, North Coast Redwoods District, P.O. Box 2006, Eureka, CA 95502; or call (707) 445–6547 ext. 19, email *Jay.Harris@parks.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, and U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Park Service, and National Oceanic Atmospheric Administration National Marine Fisheries Service have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The proposed project is located on U.S. Route 101 in southern Humboldt County. The primary purpose of the proposed project is to modify the roadway alignment to accommodate Surface Transportation Assistance Act (STAA) truck travel on U.S. Route 101 in Humboldt County, California. The project includes minor realignment, minor widening, culvert improvements, construction of a retaining wall, and repaving the roadway. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) for the project approved on May 18, 2010, the Supplement to the Final Environmental Assessment (Supplement) approved on September 18, 2013, in the Finding of No Significant Impact (FONSI) issued on May 1, 2017, and in other documents in Caltrans project records. The EA, Supplement, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA, Supplement, and FONSI can be viewed and downloaded from the project Web site at *dot.ca.gov/dist1/d1projects/richardson_grove/.*

The U.S. Army Corp of Engineers decision and Nation Wide Permit are available by contacting the U.S. Army Corp of Engineers at the address provided above.

The U.S. Fish and Wildlife Service consultations and Letter of Concurrence are available by contacting the U.S. Fish and Wildlife Service at the address provided above.

The U.S. National Park Service National Scenic River consultation is available by contacting the National Park Service at the address provided above.

The U.S. NOAA National Marine Fisheries consultation and Letter of Concurrence are available by contacting U.S. N.O.A.A National Marine Fisheries at the address provided above.

The Section 4(f) consultation and Letter of Concurrence are available by contacting the California Department of Parks and Recreation at the address provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]
2. Federal Aid Highway Act; [23 U.S. C109]
3. Air: Clean Air Act 42 U.S.C. 7401–7671(q)
4. Migratory Bird Treaty Act [16 U.S.C. 703–712]
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]

6. Hazardous Materials: Comprehensive Environmental response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
7. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 13112 Invasive Species
8. Wild and Scenic Rivers 16 U.S.C. 1271–1287
9. Endangered Species Act 16 U.S.C. 1531–1543
10. Clean Water Act 33 U.S.C. 1251–1376
11. Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. 303)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 139(*l*)(1)

**Larry Vinzant,**

*Senior Environmental Specialist, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2017–11528 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2017–0098]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GUSTO!; Invitation for Public Comments

**AGENCY:** Maritime Administration

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before July 5, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD–2017–0098. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel GUSTO! is:

—*Intended Commercial Use of Vessel:* multi-boat fish and tour charter

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2017–0098 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator. Dated: May 31, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017–11516 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2017–0099]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COCONUT; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before July 5, 2017.

**ADDRESSES:** Comments should refer to docket number MARAD–2017–0099. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email *Bianca.carr@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel COCONUT is:

—*Intended Commercial Use of Vessel:* ''sightseeing''

—*Geographic Region:* ''California''

The complete application is given in DOT docket MARAD–2017–0099 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT/MARAD solicits comments from the public to better inform its rulemaking process. DOT/MARAD posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

* * * * *

By Order of the Maritime Administrator.
Dated: May 31, 2017.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2017–11515 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2016–0137; Notice 1]**

### Arconic Wheel and Transportation Products, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Arconic Wheel and Transportation Products, a business division of Arconic, Inc., formerly known as Alcoa, Inc. (Arconic), has determined that certain Alcoa aluminum wheels do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Alcoa, Inc. filed a noncompliance information report dated November 21, 2016. Arconic then petitioned NHTSA on December 5, 2016, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is July 5, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

**SUPPLEMENTARY INFORMATION:**

I. *Overview:* Arconic Wheel and Transportation Products (Arconic), has determined that certain Alcoa aluminum wheels do not fully comply with paragraph S5.2(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, *Tire Selection and Rims and Motor Home/Recreation Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of more than 4,536 kilograms (10,000 pounds).* Alcoa, Inc. filed a noncompliance information report dated November 21, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Arconic then petitioned NHTSA on December 5, 2016, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Arconic's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Equipment Involved:* Approximately 1,975 Alcoa model 88367X aluminum wheels, size 22.5″ Dia. x 8.25″, produced for the heavy duty truck wheel market, and manufactured between August 1, 2016, and November 7, 2016, are potentially involved.

III. *Noncompliance:* Arconic explains that the noncompliance is that the wheel diameter was incorrectly marked on the subject wheels as 24.5″ x 8.25″, when it should have been marked as 22.5″ x 8.25″. This marking error overstates the wheel diameter by 2″. Therefore, the subject wheels do not meet the requirements of paragraph S5.2(b) of FMVSS No. 120.

IV. *Rule Text:* Paragraph S5.2(b) of FMVSS No. 120 states in pertinent part:

S5.2 Rim marking. Each rim or, at the option of the manufacturer in the case of a single-piece wheel, wheel disc shall be marked with the information listed in paragraphs (a) through (e) of this paragraph, in lettering not less than 3 millimeters high, impressed to a depth or, at the option of the manufacturer, embossed to a height of not less than 0.125 millimeters . . .

(b) The rim size designation, and in case of multipiece rims, the rim type designation. For example: 20x5.50, or 20x5.5.

V. *Summary of Arconic's Petition:* Arconic described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Arconic submitted the following reasoning:

1. If the mounting technician relied solely on the incorrectly stated 24.5″ diameter stamped on the rim and tried to mount a 24.5″ x 8.25″ tire, the tire will not inflate. Therefore, it would be obvious to the mounting technician that there is a tire/rim mismatch, because the air will immediately escape during inflation and no tire/rim seal will ever be achieved. Heavy-duty truck rim diameter sizes in the U.S. market are in increments 19.5″, 22.5″ and 24.5″, so any tire diameter other than 22.5″ will simply not mount and/or inflate on the mismarked 24.5″ rim.

2. All product literature that accompanies the mislabeled 24.5″ x 8.25″ aluminum wheels correctly identifies the wheel as having a 22.5″ diameter. The part number stamped on the wheels correctly associates the wheels in catalogs (hard copy and electronic) as having a 22.5″ diameter. The vast majority of the affected wheels were sold for assembly on new heavy-duty semi-tractors and it is believed the certification label, tire pressure placard and all other literature accompanying the vehicle correctly states the required wheel diameter as 22.5″.

3. The vast majority of the affected wheels were sold for assembly on new heavy-duty semi-tractors, which means the selection of tires and wheels during assembly does not require reliance on the actual size markings on the wheel. Rather, this selection is based upon part number matching during the tire/wheel subassembly process, and the part number descriptions correctly reflect the actual wheel size of 22.5″ x 8.25″. Only one manufacturer, a trailer manufacturer, actually noticed the mismarking of the rim diameter. The remaining manufacturers that undertook tire and rim assembly were unaffected by rim mismarking.

4. If a vehicle owner or operator must replace one of the affected rims they would most likely go to a facility that is familiar with tire/wheel replacements for heavy-duty trucks. Pursuant to 29 CFR 1910.177(c) (Employee Training), federal regulations require that only trained technicians are permitted to mount tires and wheels on heavy-duty vehicles and it should be obvious to the technician when a wheel marking is overstated by 2″.

5. For rims that have an obvious incorrect size marking stamped into the wheel, the technician will have to rely on another source for the correct rim size including, when applicable, the certification label, tire pressure placard or any other literature to determine the correct wheel and tire size for the replacement.

6. Because a tire/rim seal cannot be achieved with an overstated 2″ rim diameter, there is no risk to the technician during attempted tire mounting operations.

7. All other roll stamp rim marking information on the subject rims required by S5.2 of FMVSS No. 120 is correct. The rim is marked with the correct rim width, manufacturer, date of manufacture, and DOT.

8. The agency has previously found to be inconsequential a noncompliance with the rim marking requirements of FMVSS No. 110 *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less* (citing Docket No. NHTSA–1999–6685, July 5, 2000).

9. Arconic is not aware of any crashes or injuries associated with this roll stamp rim marking issue.

Arconic states that they have corrected the roll stamp for all future production.

Arconic concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject wheels that Arconic no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant wheels under their control after Arconic notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2017–11525 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2017–0027; Notice 1]**

### Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Cooper Tire & Rubber Company (Cooper), has determined that certain Cooper Mastercraft Courser HSX Tour brand tubeless radial tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Cooper filed a

noncompliance report dated April 12, 2017. Cooper also petitioned NHTSA on April 12, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

**DATES:** The closing date for comments on the petition is July 5, 2017.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) Web site at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

**SUPPLEMENTARY INFORMATION:**

I. *Overview:* Cooper Tire & Rubber Company (Cooper), has determined that certain Cooper Mastercraft Courser HSX Tour brand tubeless radial tires do not fully comply with paragraph S5.5.1(b) of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles*. Cooper filed a noncompliance report dated April 12, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Cooper also petitioned NHTSA on April 12, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of Cooper's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. *Tires Involved:* Approximately 484 Cooper Mastercraft Courser HSX Tour brand tubeless radial tires, size 275/55R20, manufactured between March 6, 2017, and March 15, 2017, are potentially involved.

III. *Noncompliance:* Cooper explains that the noncompliance is that the inboard sidewalls of the subject tires are labeled with an incorrect manufacturer's identification mark, and therefore do not fully meet all applicable requirements of paragraph S5.5.1(b) of FMVSS No. 139. Specially, the tires are labeled with the manufacturer's identification mark ''UP'' instead of ''UT.''

IV. *Rule Text:* Paragraph S5.5.1 of FMVSS No. 139 states, in pertinent part:

S5.5.1 *Tire Identification Number.*

. . .

(b) *Tires manufactured on or after September 1, 2009.* Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Except for retreaded tires, either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire. Except for retreaded tires, if a tire does not have an intended outboard sidewall, the tire must be labeled with the tire identification number required by 49 CFR part 574 on one sidewall and with either the tire identification number or a partial tire identification number, containing all characters in the tire identification number except for the date code and, at the discretion of the manufacturer, any optional code, on the other side wall.

V. *Summary of Cooper's Petition:* Cooper described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper submitted the following reasoning:

a) While the 484 tires in the subject population contain an improper plant code on the inboard side of the tire, they are in all other respects properly labeled and meet all performance requirements under the Federal Motor Vehicle Safety Standards. Plant code identification has no bearing on the performance or operation of a tire and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread and recycle industry.

b) Tire registration and traceability could be a concern in some instances where there are plant code errors; however, in this instance, the incorrect plant code is still tied to a Cooper Tire manufacturing facility. Consumers will be able to accurately identify the responsible manufacturer and there will be no issues with registering the tires. Cooper Tire has modified its internal registration systems to allow for the proper registration of the affected tires. Cooper Tire accepts tire registration in a number of ways including electronically via the company's Web site. Cooper Tire's online database has been modified to accept registrations from consumers which include an incorrectly listed UP plant code when the other identifying information (brand, serial week) are accurately reported. Cooper Tire also accepts hard copy tire registration cards, which it processes manually. As long as the remaining identifying information (brand, serial and week) are listed accurately on the registration card, Cooper Tire will process the registration. All internal personnel responsible for manual processing of tire registration cards have been made aware of the plant code error and have been trained on how to accurately process and register tires with the

incorrect plant code information. Lastly, Cooper Tire receives some registration cards through Computerized Information and Management Services, Inc. (''CIMS''), a third-party vendor that collects and provides tire registration cards to a number of manufacturers, including Cooper Tire. CIMS has been made aware of the plant code error. CIMS has informed Cooper Tire that they will provide all registration cards to Cooper Tire that have a Cooper Tire plant code listed.

c) In the event Cooper Tire has to conduct a safety related recall in connection with the 484 subject tires, Cooper Tire will include TINs UT Yl FXJ 1017 to 1117 and UP Yl FXJ 1017 to 1117 in its recall universe, so that there will be no issues with regard to identifying the recall population. Should Cooper Tire receive any affected tires in its service facilities for adjustments, the service technician will record the proper TIN number to accurately record the data.

d) Cooper Tire has taken steps over the last year to add additional checks in its processes to prevent TIN errors. One of those checks includes implementing software that only allows for the plant to choose the plant code from a drop down menu that includes only its specific plant code. In this instance, however, the molds were transferred from one Cooper Tire facility (Findlay) to another (Texarkana). The Texarkana employee responsible for preparing the mold for use in the Texarkana facility only modified the mold on one side and the error went undetected. The mold containing the error was in production from March 6th through March 15th and when the error was detected on March 30th, the plug error was corrected in the mold to prevent future issues. Responsible Cooper Tire personnel will receive additional training on these processes.

Cooper concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after Cooper notified them that the subject noncompliance existed.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2017–11526 Filed 6–2–17; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Community Reinvestment Act Regulations

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Community Reinvestment Act Regulations.''

**DATES:** Comments must be submitted on or before August 4, 2017.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0160, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

*Title:* Community Reinvestment Act Regulations.

*OMB Control No.:* 1557–0160.

*Description:* The Community Reinvestment Act (CRA) requires the federal banking agencies [1] (Agencies) to assess the record of regulated financial institutions (institutions) in helping to meet the credit needs of their entire communities, including low- and

[1] OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation.

moderate-income neighborhoods, consistent with safe and sound operations. The CRA further requires the Agencies to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities.[2] The CRA statute requires the Agencies to issue regulations to carry out its purposes.[3]

Each agency must provide written CRA performance evaluations (CRA PE) of the institutions they supervise. The CRA PEs are disclosed to the public. The public portion of each written CRA PE must present the agency's conclusions with respect to the CRA performance standards identified in its regulations; including the facts and data supporting those conclusions; and contain the institution's CRA rating and the basis for that rating.

The reporting, recordkeeping, and disclosure requirements in the CRA regulations are necessary, as they provide the Agencies with the information they need to examine, assess, and assign ratings reflecting institutions' CRA performance and to prepare the public section of the CRA PE.

The OCC's CRA regulation, 12 CFR 25, applies to national banks, including federal branches, as those are defined in 12 CFR 28, with federally insured deposits, except as provided in 12 CFR 25.11, (collectively, banks). Similarly, the OCC's CRA regulation, 12 CFR 195, applies to savings associations, except as provided in 12 CFR 195.11.

Twelve CFR 25.25(b) and 195.25(b) provide that requests for designation as a wholesale or limited purpose bank or savings association must be made in writing with the OCC at least three months prior to the proposed effective date of the designation.

Twelve CFR 25.27 and 195.27 provide for optional submission of strategic plans to the OCC for approval. If the requirements of 12 CFR 25.27(a) or 195.27(a), respectively, are met, institutions' records of helping to meet the credit needs of their assessment areas will be assessed under their approved strategic plans.

Twelve CFR 25.42(a) and 195.42(a) require that large banks and savings associations[4] shall collect and maintain certain small business/small farm loan data in a machine-readable form and report it annually pursuant to 12 CFR 25.42(b)(1) and 195.42(b)(1).

Twelve CFR 25.42(b)(2) and 195.42(b)(2) require that large banks and savings associations report annually in machine readable form the aggregate number and aggregate amount of community development loans originated or purchased.

Twelve CFR 25.42(b)(3) and 195.42(b)(3) require that large banks and savings associations, if subject to reporting under 12 CFR 1003 (Home Mortgage Disclosure (Regulation C)), must report the location of each home mortgage loan application, origination, or purchase outside the metropolitan statistical area(s) in which the bank or savings association has a home/branch office, and the location of each home mortgage loan application, origination, or purchase outside any metropolitan statistical area, in accordance with the requirements of Regulation C.

Twelve CFR 25.42(c)(1) and 195.42(c)(1) provide that all banks and savings associations may collect and maintain in machine readable form certain data for consumer loans originated or purchased by a bank or savings association for consideration under the lending test. Under 12 CFR 25.42(c)(2) and 195.42(c)(2), all banks and saving associations may include other information concerning their lending performance, including additional loan distribution data.

Twelve CFR 25.42(d) and 195.42(d) provide that banks and savings associations that elect to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report the data that the bank or savings association would have collected, maintained, and reported pursuant to 12 CFR 25.42(a)–(c) or 195.42(a)–(c), respectively, had the loans been originated or purchased by the bank or savings association. For home mortgage loans, the bank or savings association must also be prepared to identify the home mortgage loans reported under HMDA by the affiliate.

Twelve 12 CFR 25.42(e) and 195.42(e) provide that banks and savings associations that elect to have the OCC consider community development loans by a consortium or a third party, for purposes of the lending or community development tests or an approved strategic plan, must report for those loans the data that the bank or savings association would have reported under 12 CFR 25.42(b)(2) or 195.42(b)(2), respectively, had the loans been originated or purchased by the bank or savings association.

Twelve CFR 25.42(g) and 195.42(g) require that banks and savings associations, except those that were a small bank or small savings association[5] during the prior calendar year, collect and report to the OCC a list for each assessment area showing the geographies within the area.

Twelve CFR 25.43 and 195.43 generally require that all banks and savings associations maintain a public file that contains: All written comments and responses; a copy of the public section of the bank's or savings association's most recent CRA performance evaluation; a list of the bank's or savings association's branches; a list of the branches opened or closed; a list of services offered; and a map of each assessment area delineated by the bank or savings association under 12 CFR 25.41 or 195.41, respectively. Certain banks and savings associations must include: A copy of their approved strategic plan and a description of the current efforts to improve their performance in helping to meet the credit needs of its entire community. Certain large banks and savings associations must include in their public files (for prior two years): Consumer loan data; CRA Disclosure Statements; and Home Mortgage Disclosure Act (HMDA) Disclosure Statements. Small banks and savings associations must include their loan-to-deposit ratio for each quarter of the prior calendar year and, at their option, additional data on its loan-to-deposit ratio.

*Type of Review:* Regular review.

*Affected Public:* Businesses or other for-profit.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,234.

*Estimated Total Annual Burden:* 113,351 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including

[2] 12 U.S.C. 2903.

[3] 12 U.S.C. 2905.

[4] Large banks and large savings associations are banks and savings associations that are not small banks or small savings associations defined in 12 CFR 25.12(u) or 195.12(u), respectively.

[5] *See* 12 CFR 25.12(u) and 195.12(u), respectively.

through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2017.

**Karen Solomon,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2017–11550 Filed 6–2–17; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Capital Adequacy Standards

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Capital Adequacy Standards.'' The OCC also is giving notice that it has submitted the collection to OMB for review.

**DATES:** Comments must be submitted on or before July 5, 2017.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0318, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0318, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to *oira submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC is asking that OMB extend its approval of the following collection:

*Title:* Capital Adequacy Standards.

*OMB Control No.:* 1557–0318.

*Frequency of Response:* On occasion.

*Affected Public:* Business or other for-profit.

**Section-by-Section-Analysis**

Twelve CFR part 3 sets forth the OCC's minimum capital requirements and overall capital adequacy standards for national banks and federal savings associations (institutions).

Section 3.3(c) allows for the recognition of netting across multiple types of transactions or agreements if an institution obtains a written legal opinion verifying the validity and enforceability of the agreement under certain circumstances and maintains sufficient written documentation of this legal review.

Section 3.22(h)(2)(iii)(A) permits the use of a conservative estimate of the amount of an institution's investment in its own capital or the capital of unconsolidated financial institutions held through the index security with prior approval by the OCC.

Section 3.35(b)(3)(i)(A) requires, for a cleared transaction with a qualified central counterparty (QCCP), that a client bank apply a risk weight of two percent, provided that the collateral posted by the bank to the QCCP is subject to certain arrangements and the client bank has conducted a sufficient legal review (and maintains sufficient written documentation of the legal review) to conclude with a well-founded basis that the arrangements, in the event of a legal challenge, would be found to be legal, valid, binding, and enforceable under the law of the relevant jurisdictions.

Section 3.37(c)(4)(i)(E), regarding collateralized transactions, requires that an institution have policies and procedures in place describing how it determines the period of significant financial stress used to calculate its own internal estimates for haircuts and be able to provide empirical support for the period used.

Section 3.41(b), which sets forth operational requirements for securitization exposures, allows an institution to recognize for risk-based capital purposes, in the case of synthetic securitizations, a credit risk mitigant to hedge underlying exposures if certain conditions are met. Section 3.41(b)(3) includes a requirement that the institution obtain a well-reasoned opinion from legal counsel that confirms the enforceability of the credit risk mitigant in all relevant jurisdictions.

Section 3.41(c)(2)(i) requires that an institution demonstrate its comprehensive understanding of a securitization exposure by conducting and documenting an analysis of the risk characteristics of each securitization exposure prior to its acquisition, taking into account a number of specified considerations.

In the case where an institution provides non-contractual support to a securitization, § 3.42(e)(2) requires the institution to publicly disclose that it has provided implicit support to a securitization and the risk-based capital impact to the bank of providing such implicit support.

Section 3.62 sets forth disclosure requirements related to the capital requirements of an institution. These requirements apply to an institution with total consolidated assets of $50 billion or more that is not a consolidated subsidiary of an entity that is itself subject to Basel III disclosures.

Section 3.62(a) requires quarterly disclosure of information in the applicable tables in § 3.63 and, if a significant change occurs, such that the most recent reported amounts are no longer reflective of the institution's capital adequacy and risk profile, § 3.62(a) requires the institution to disclose as soon as practicable thereafter a brief discussion of the change and its likely impact. Section 3.62(a) also permits annual disclosure of qualitative information that typically does not change each quarter, provided that any significant changes are disclosed in the interim.

Section 3.62(b) requires that an institution have a formal disclosure policy approved by the board of directors that addresses its approach for determining the disclosures it makes. The policy must address the associated internal controls and disclosure controls and procedures. Section 3.62(c) permits an institution to disclose more general information about certain subjects if the institution concludes that the specific commercial or financial information required to be disclosed under § 3.62 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) and the institution provides the reason the specific items of information have not been disclosed.

Section 3.63 sets forth the specific disclosure requirements for a non-advanced approaches institution with total consolidated assets of $50 billion or more that is not a consolidated subsidiary of an entity that is itself subject to Basel III disclosure requirements. Section 3.63(a) requires those institutions to make the disclosures in Tables 1 through 10 in § 3.63 and in § 3.63(b) for each of the last three years beginning on the effective date of the rule. Section 3.63(b) requires quarterly disclosure of an institution's common equity tier 1 capital, additional tier 1 capital, tier 2 capital, tier 1 and total capital ratios, including the regulatory capital elements and all the regulatory adjustments and deductions needed to calculate the numerator of such ratios; total risk-weighted assets, including the different regulatory adjustments and deductions needed to calculate total risk-weighted assets; regulatory capital ratios during any transition periods, including a description of all the regulatory capital elements and all regulatory adjustments and deductions needed to calculate the numerator and denominator of each capital ratio during any transition period; and a reconciliation of regulatory capital elements as they relate to its balance sheet in any audited consolidated financial statements. Tables 1 through 10 in § 3.63 set forth qualitative and/or quantitative requirements for scope of application, capital structure, capital adequacy, capital conservation buffer, credit risk, counterparty credit risk-related exposures, credit risk mitigation, securitizations, equities not subject to Subpart F (Market Risk requirements) of the rule, and interest rate risk for non-trading activities.

Section 3.121 requires an institution subject to the advanced approaches risk-based capital requirements to adopt a written implementation plan to address how it will comply with the advanced capital adequacy framework's qualification requirements and also develop and maintain a comprehensive and sound planning and governance process to oversee the implementation efforts described in the plan. Section 3.122 further requires these institutions to: Develop processes for assessing capital adequacy in relation to an organization's risk profile; establish and maintain internal risk rating and segmentation systems for wholesale and retail risk exposures, including comprehensive risk parameter quantification processes and processes for annual reviews and analyses of reference data to determine their relevance; document their processes for identifying, measuring, monitoring, controlling, and internally reporting operational risk; verify the accurate and timely reporting of risk-based capital requirements; and monitor, validate, and refine their advanced systems.

Section 3.123 sets forth ongoing qualification requirements that require an institution to notify the OCC of any material change to an advance system and to establish and submit to the OCC a plan for returning to compliance with the qualification requirements.

Section 3.124 requires an institution to submit to the OCC, within 90 days of consummating a merger or acquisition, an implementation plan for using its advanced systems for the merged or acquired company.

Section 3.132(b)(2)(iii)(A) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and over-the-counter (OTC) derivative contracts, and internal estimates for haircuts. With the prior written approval of the OCC, an institution may calculate haircuts using its own internal estimates of the volatilities of market prices and foreign exchange rates. The section requires institutions to satisfy certain minimum quantitative standards in order to receive OCC approval to use its own internal estimates.

Section 3.132(b)(3) covers counterparty credit risk of repo-style transactions, eligible margin loans, OTC derivative contracts, and simple Value-at-Risk (VaR) methodology. With the prior written approval of the OCC, an institution may estimate exposure at default (EAD) for a netting set using a VaR model that meets certain requirements.

Section 3.132(d)(1) permits the use of the internal models methodology (IMM) to determine EAD for counterparty credit risk for derivative contracts with prior written approval from the OCC. Section 3.132(d)(1)(iii) permits the use of the internal models methodology for derivative contracts, eligible margin loans, and repo-style transactions subject to a qualifying cross-product netting agreement with prior written approval from the OCC.

Section 3.132(d)(2)(iv) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, and risk-weighted assets using IMM. Under the IMM, an institution uses an internal model to estimate the expected exposure (EE) for a netting set and then calculates EAD based on that EE. An institution must calculate two EEs and two EADs (one stressed and one unstressed) for each netting as outlined in this section. An institution may use a conservative measure of EAD subject to prior written approval of the OCC.

Section 3.132(d)(3)(vi) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. To obtain OCC approval to calculate the distributions of exposures upon which the EAD calculation is based, an institution must demonstrate to the satisfaction of the OCC that it has been using for at least one year an internal model that broadly meets the minimum standards, with which the institution must maintain compliance. The institution must have procedures to identify, monitor, and control wrong-way risk throughout the life of an exposure and they must include stress testing and scenario analysis.

Section 3.132(d)(3)(viii) addresses counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts. When estimating model parameters based on a stress period, an institution must use at least three years of historical data that include a period of stress to the credit default spreads of the institution's counterparties. The institution must review the data set and update the data as necessary, particularly for any material changes in its counterparties. The institution must demonstrate at least quarterly that the stress period coincides with increased credit default

swap (CDS) or other credit spreads of the institution's counterparties. The institution must have procedures to evaluate the effectiveness of its stress calibration that include a process for using benchmark portfolios that are vulnerable to the same risk factors as the institution's portfolio. The OCC may require the institution to modify its stress calibration to better reflect actual historic losses of the portfolio.

Section 3.132(d)(3)(ix), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts requires that an institution must subject its internal model to an initial validation and annual model review process that includes consideration of whether the inputs and risk factors, as well as the model outputs, are appropriate. This section requires institutions to have a backtesting program for its model that includes a process by which unacceptable model performance will be determined and remedied.

Section 3.132(d)(3)(x), regarding counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts, provides that an institution must have policies for the measurement, management, and control of collateral and margin amounts.

Section 3.132(d)(3)(xi), concerning counterparty credit risk of repo-style transactions, eligible margin loans, and OTC derivative contracts states that an institution must have a comprehensive stress testing program that captures all credit exposures to counterparties, and incorporates stress testing of principal market risk factors and creditworthiness of counterparties.

Section 3.141 relates to operational criteria for recognizing the transfer of risk in connection with a securitization. Section 3.141(b)(3) requires an institution to obtain a well-reasoned legal opinion confirming the enforceability of the credit risk mitigant in all relevant jurisdictions in order to recognize the transference of risk in connection with a synthetic securitization. An institution must demonstrate its comprehensive understanding of a securitization exposure under § 3.141(c)(2) for each securitization exposure by conducting an analysis of the risk characteristics of a securitization exposure prior to acquiring the exposure and document such analysis within three business days after acquiring the exposure. Sections 3.141(c)(2)(i) and (ii) require that institutions, on an on-going basis (at least quarterly), evaluate, review, and update as appropriate the analysis required under this section for each securitization exposure.

Section 3.142(h)(2), regarding the capital treatment for securitization exposures, requires an institution to disclose publicly if it has provided implicit support to a securitization and the regulatory capital impact to the institution of providing such implicit support.

Section 3.153(b), outlining the Internal Models Approach (IMA) for calculating risk-weighted assets for equity exposures, specifies that an institution must receive prior written approval from the OCC before it can use IMA by demonstrating to the OCC that the national bank or federal savings association meets certain criteria.

Section 3.172 specifies that each advanced approaches institution that has completed the parallel run process must publicly disclose its total and tier 1 risk-based capital ratios and their components.

Section 3.173 addresses disclosures by an advanced approaches institution that is not a consolidated subsidiary of an entity that is subject to the Basel III disclosure requirements. An advanced approaches institution that is subject to the disclosure requirements must make the disclosures described in Tables 1 through 12. The institution must make these disclosures publicly available for each of the last three years (that is, twelve quarters) or such shorter period beginning on the effective date of this subpart E.

The tables in § 3.173 require qualitative and quantitative public disclosures for capital structure, capital adequacy, capital conservation and countercyclical buffers, credit risk, securitization, operational risk, equities not subject to the market risk capital requirements, and interest rate risk for non-trading activities.

*Burden Estimates:*

*Estimated Number of Respondents:* 1,365.

*Estimated Total Annual Burden Hours:* 240,711.

*Comments:* On February 8, 2017, the OCC issued a 60-day notice soliciting comment on the information collection, 82 FR 9958. One comment was received from an individual.

The commenter stated that a capital rule must be simple, easily understood, and not easily gamed by management in order to be useful. The commenter believed that 12 CFR part 3 does not meet these criteria and is too complex to be understood, verified and enforced, especially with respect to large banking organizations. The commenter stated that there were fewer bank failures in certain time periods before minimum capital regulations were adopted. The commenter also stated that revisiting 12 CFR part 3 would be in line with the Executive Order on Core Principles for Regulating the United States Financial System, which states that regulation should be efficient, effective, and appropriately tailored. Revising 12 CFR part 3 would require a rulemaking and cannot be done through this PRA process.

It should be noted that in developing the capital rules in 12 CFR part 3, the OCC addressed specific concerns related to cost, complexity, and burden of the rules. During the recent financial crisis, the lack of confidence in the banking sector increased banking organizations' cost of funding, impaired banking organizations' access to short-term funding, depressed values of banking organizations' equities, and required many banking organizations to seek government assistance. Concerns about banking organizations arose not only because market participants expected steep losses on banking organizations' assets, but also because of substantial uncertainty surrounding estimated loss rates, and thus future earnings. It is important that capital rules are sufficiently granular and risk-sensitive to capture the risks posed by particular exposures. In large part, the complexity of the capital rules is driven by the complexity of the business activities that banking organizations engage in. As banking organizations have engaged in new, more complicated financial transactions (for example, dealing in derivatives), the capital rules have become more sophisticated to capture the risks posed by these transactions.

The OCC, pursuant to section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[1] published several notices to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions, three of which included 12 CFR part 3.[2] Over 30 commenters addressed the OCC's regulatory capital requirements, focusing primarily on the revised capital rules.[3] The comments received and the OCC's response were included in the Federal Financial Institutions Examination Council's Report to Congress on EGRPRA in March 2017.[4] The agencies understand community banks' concerns that the regulatory capital rules are too complex given community banks' size, risk

[1] Public Law 104–208 (1996), codified at 12 U.S.C. 3311(b).

[2] 79 FR 32172 at 32183 (June 4, 2014); 80 FR 32046 at 32052–32053 (June 5, 2015); and 80 FR 79724 at 79733–79734 (December 23, 2015).

[3] 78 FR 62017 (October 11, 2013).

[4] *https://www.occ.gov/news-issuances/news-releases/2017/nr-ia-2017-33a.pdf,* pages 18–23.

profile, condition, and complexity and are developing a proposal to simplify the regulatory capital rules in a manner that maintains safety and soundness and the quality and quantity of regulatory capital in the banking system. Such amendments may include (1) replacing the framework's complex treatment of high volatility commercial real estate exposures with a more straightforward treatment for most acquisition, development, or construction loans; (2) simplifying the current regulatory capital treatment for mortgage servicing assets, timing difference deferred tax assets, and holdings of regulatory capital instruments issued by financial institutions; and (3) simplifying the current limitations on minority interests in regulatory capital. The agencies would seek industry comment on these amendments through the normal notice and comment process.

The OCC regularly monitors and analyzes developments in the banking industry to ensure that the revised capital rules appropriately reflect risks faced by banking organizations and considers many issues before determining whether a change to the revised capital rules is appropriate. The safety and soundness of community banks depends, in part, on having and maintaining sufficient regulatory capital. More than 500 banking organizations, mostly community banks, failed in the aftermath of the financial crisis largely because they did not have sufficient capital relative to their risk.

To assist community banks, the agencies published a community bank guide to help community banks understand the sections of the revised 2013 capital rules most relevant to their operations.[5] The OCC has also published a number of guidance documents to assist banks in their capital planning efforts [6] and intends to publish revisions to its capital handbook to make guidance publications and regulatory revisions available in one place.

Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: May 30, 2017.

**Karen Solomon,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2017–11548 Filed 6–2–17; 8:45 am]

**BILLING CODE 4810–33–P**

[5] ''New Capital Rule; Community Bank Guide,'' *www.occ.gov/news-issuances/news-releases/2013/2013-110b.pdf.*

[6] For example, OCC bulletin 2012–16, (June 7, 2012) ''Capital Planning: Guidance for Evaluating Capital Planning and Adequacy,'' *https://www.occ.gov/news-issuances/bulletins/2012/bulletin-2012-16.html.*

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Disclosure Requirements Associated With Supplementary Leverage Ratio

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Disclosure Requirements Associated with Supplementary Leverage Ratio.''

**DATES:** Comments must be submitted on or before August 4, 2017.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0322, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.tress.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Disclosure Requirements Associated with Supplementary Leverage Ratio.

*OMB Control No.:* 1557–0322.

*Description:* All banking organizations that are subject to the agencies' advanced approaches risk-based capital rules (advanced approaches banking organizations), as defined in the 2013 revised capital rule,[1] are required to disclose their supplementary leverage ratios.[2] Advanced approaches banking organizations must report their

[1] 12 CFR 3.100(b)(1).

[2] 12 CFR 3.10(c), 3.172(d), and 3.173.

supplementary leverage ratios on the applicable regulatory reports. These disclosures enhance the transparency and consistency of reporting requirements for the supplementary leverage ratio by all internationally active organizations.

*Type of Review:* Regular review.

*Affected Public:* National banks and federal savings associations that are subject to the OCC's advanced approaches risk-based capital rules.

*Frequency of Response:* Quarterly.

*Estimated Number of Respondents:* 15.

*Total estimated Annual Burden:* 300 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2017.

**Karen Solomon,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2017–11546 Filed 6–2–17; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fair Housing Home Loan Data System Regulation

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled ''Fair Housing Home Loan Data System Regulation.''

**DATES:** Comments must be received on or before August 4, 2017.

**ADDRESSES:** Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0159, 400 7th Street SW., Suite 3E–218, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of the collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Fair Housing Home Loan Data System Regulation.

*OMB Control No.:* 1557–0159.

*Description:* The Fair Housing Act (42 U.S.C. 3605) prohibits discrimination in the financing of housing on the basis of race, color, religion, sex, or national origin. The Equal Credit Opportunity Act (ECOA) (15 U.S.C. 1691 *et seq.*) prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, receipt of income from public assistance, or exercise of any right under the Consumer Credit Protection Act (CCPA) (15 U.S.C. 1601 *et seq.*). The OCC is responsible for ensuring that national banks and federal savings associations comply with those laws. This information collection is needed to promote compliance and for the OCC to fulfill its statutory responsibilities.

The OCC uses the data to determine whether an institution treated applicants consistently and made credit decisions commensurate with the applicants' qualifications and in compliance with ECOA and CCPA.

The information collection requirements are as follows:

- 12 CFR 27.3(a) requires national banks that are required to collect data on home loans under 12 CFR part 203 [1] to present the data on Form FR HMDA–LAR,[2] or in automated format in accordance with the HMDA–LAR instructions, and to include one additional item (the reason for denial) on the HMDA–LAR. Section 27.3(a) also lists exceptions to the HMDA–LAR recordkeeping requirements. Federal savings associations report this information to the OCC pursuant to 12

[1] This regulation has been transferred to the Consumer Financial Protection Bureau (CFPB) (12 CFR part 1003).

[2] Loan Application Register, *http://www.ffiec.gov/hmda/pdf/hmdalar2011.pdf.*

CFR 128.6 and the CFPB's Regulation C, 12 CFR part 1003.

- 12 CFR 27.3(b) lists the information national banks shall attempt to obtain from an applicant as part of a home loan application and sets forth the information that banks must disclose to an applicant.
- 12 CFR 27.3(c) sets forth additional information national banks must maintain in the loan file.
- 12 CFR 27.4 states that the OCC may require a national bank to maintain a Fair Housing Inquiry/Application Log found in Appendix III to part 27 if there is reason to believe that the bank is engaging in discriminatory practices or if analysis of the data compiled by the bank under the Home Mortgage Disclosure Act (12 U.S.C. 2801 *et seq.*) and 12 CFR part 203 indicates a pattern of significant variation in the number of home loans between census tracts with similar incomes and home ownership levels differentiated only by race or national origin. Section 27.4(a)(2) also requires a log if complaints filed with the Comptroller or letters in the Community Reinvestment Act file are found to be substantive in nature, indicating that the bank's home lending practices are, or may be, discriminatory.
- 12 CFR 27.5 requires a national bank to maintain the information required by § 27.3 for 25 months after the bank notifies the applicant of action taken on an application or after withdrawal of an application.
- 12 CFR 27.7 requires a national bank to submit the information required by §§ 27.3(a) and 27.4 to the OCC upon its request prior to a scheduled examination using the Monthly Home Loan Activity Format form in Appendix I to part 27 and the Home Loan Data Form in Appendix IV to part 27. Section 27.7(c)(3) states that a bank with fewer than 75 home loan applications in the preceding year will not be required to submit such forms unless the home loan activity is concentrated in the few months preceding the request for data, indicating the likelihood of increased activity over the subsequent year or there is cause to believe that a bank is not in compliance with the fair housing laws based on prior examinations and/or complaints, among other factors.
- § 27.7(d) provides that if there is cause to believe that a bank is in noncompliance with fair housing laws, the Comptroller may require submission of additional Home Loan Data Submission Forms. The Comptroller may also require submission of the information maintained under § 27.3(a) and Home Loan Data Submission Forms at more frequent intervals.

OCC-regulated institutions now have access to a CFPB-developed web-based data submission and edit-check system (the HMDA Platform) that may be used to process HMDA data. Some institutions, typically those with small volumes of reported loans or those who do not use a vendor or other software to prepare their HMDA data for submission, will still need a software solution for integrating HMDA data from paper records or electronic systems. Therefore, the CFPB created a prototype ''LAR Formatting Tool'' which will allow financial institutions with small volumes of reported loans, or those who do not use a vendor or other software to prepare their HMDA data for submission, to enter HMDA data and to create a pipe delimited text file to upload to the HMDA Platform. The institution can then proceed through the interactive Web pages of the HMDA Platform to process HMDA data.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 1,927.

*Estimated Total Annual Burden:* 31,704 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the information collection;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 30, 2017.

**Karen Solomon,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2017–11545 Filed 6–2–17; 8:45 am]

**BILLING CODE 4810–33–P**


# FEDERAL REGISTER

Vol. 82 Monday,
No. 106 June 5, 2017

Part II

## The President

Federal Register
Vol. 82, No. 106
Monday, June 5, 2017

# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9618 of May 31, 2017**

## African-American Music Appreciation Month, 2017

**By the President of the United States of America**

**A Proclamation**

During June, we pay tribute to the contributions African Americans have made and continue to make to American music. The indelible legacy of these musicians—who have witnessed our Nation's greatest achievements, as well as its greatest injustices—give all Americans a richer, deeper understanding of American culture. Their creativity has shaped every genre of music, including rock and roll, rhythm and blues, jazz, gospel, hip hop, and rap.

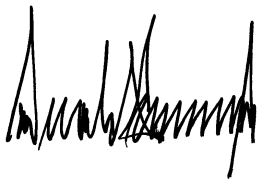
In March, rock and roll lost Chuck Berry, one of its founding fathers. Berry's signature style on the guitar, on display in classics like ''Johnny B. Goode,'' ''Roll Over Beethoven,'' ''Maybellene,'' and ''Carol,'' came to define the explosive new sound of rock and roll. As Keith Richards, guitarist for the Rolling Stones said while introducing Berry into the Rock and Roll Hall of Fame: ''This is the gentleman who started it all.''

We also take time this month to recognize the musical influence of two of the greatest jazz musicians of all time, Dizzy Gillespie and Ella Fitzgerald, as this year marks their centennial birthdays. Gillespie, through his legendary trumpet sound and Fitzgerald, through her pure, energetic voice, treated people around the world to spirited and soulful jazz music. Their work has influenced countless musicians, and continues to inspire listeners young and old.

The contributions of Berry, Gillespie, Fitzgerald, and other African-American musicians shine as examples of how music can bring us together. These musicians also remind us of our humanity and of our power to overcome. They expressed the soul of blues, gospel, and rock and roll, which has so often captured the hardships of racism and injustices suffered by African Americans, as well as daily joys and celebrations. Their work highlights the power music has to channel the human experience, and they remain a testament to the resilience of all freedom-loving people. We are grateful for their contribution to the cannon of great American art.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2017 as African-American Music Appreciation Month. I call upon public officials, educators, and all the people of the United States to observe this month with appropriate activities and programs that raise awareness and appreciation of African-American Music.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–11773
Filed 6–2–17; 11:15 am]
Billing code 3295–F7–P

# Presidential Documents

**Proclamation 9619 of May 31, 2017**

## Great Outdoors Month, 2017

**By the President of the United States of America**

**A Proclamation**

With June comes the summer sun, longer days, and warmer weather—the perfect opportunity to enjoy the great outdoors. During Great Outdoors Month, we encourage all Americans to experience the beauty and adventure of our Nation's lakes, mountains, and forests, and even of their own backyards.

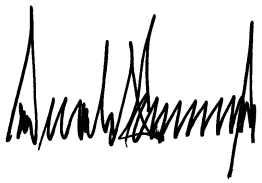
Each of our States and territories provides endless opportunities to enjoy the great outdoors. Americans can go fishing in Eleven Mile State Park in Colorado, camp on the bluffs of Perrot State Park in Wisconsin, and bike along the Sable River in Ludington State Park in Michigan. These lands and waters are also home to cultural and historic sites that inspire our love of country and serve as important touchstones for who we are as Americans.

Whether your great outdoors means a community park, a state reservoir, a national forest, or a backyard campout, we must cherish our outdoor spaces and work to preserve them for generations. This is why, as President, I am working to bring leaders throughout the country together to improve the management of our vitally important public lands, especially through public-private partnerships to help clear the backlog of deferred maintenance.

I urge all Americans to set aside time during the month of June to visit our great outdoors and experience America's natural and cultural history. This month in particular, we celebrate our Nation's remarkable natural heritage and express our gratitude to those who help preserve our natural habitat for generations of Americans to come.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2017 as Great Outdoors Month. I urge all Americans to explore the great outdoors while acting as stewards of our lands and waters.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–11774
Filed 6–2–17; 11:15 am]
Billing code 3295–F7–P

# Presidential Documents

**Proclamation 9620 of May 31, 2017**

## National Caribbean-American Heritage Month, 2017

**By the President of the United States of America**

**A Proclamation**

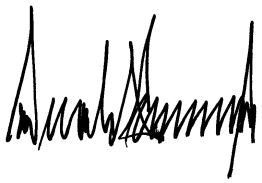
National Caribbean-American Heritage Month is a celebration of the accomplishments of Caribbean Americans and our long, shared history with the peoples of the Caribbean. We are grateful for the culture Caribbean Americans have shared with our Nation and the many contributions they have made to our society.

Throughout our history, Caribbean Americans have helped create and maintain the strength and independence of our Nation. Alexander Hamilton, who came from poverty in Nevis, was a key contributor to our Constitution and the first Secretary of the Treasury, helping to establish our modern financial system and to create the United States Coast Guard.

Every day, Caribbean Americans help make America more prosperous and secure. Our Nation is particularly grateful to the many Caribbean Americans who have served and are currently serving in our Armed Forces, protecting our Nation, and promoting freedom and peace around the world. Today, more than four million Caribbean Americans live in the United States and continue to contribute to a vibrant culture that enriches our Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2017 as National Caribbean-American Heritage Month. I encourage all Americans to join in celebrating the history, culture, and achievements of Caribbean Americans with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–11776
Filed 6–2–17; 11:15 am]
Billing code 3295–F7–P

# Presidential Documents

**Proclamation 9621 of May 31, 2017**

## National Homeownership Month, 2017

**By the President of the United States of America**

**A Proclamation**

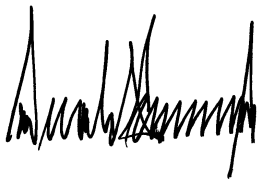
During National Homeownership Month, we recognize the many benefits of homeownership to our families, our communities, and our Nation. For generations of Americans, owning a home has been an essential element in achieving the American Dream. Homeownership is often the foundation of security and prosperity for families and communities and an enduring symbol of American freedom. This month, we recommit to ensuring that hard-working Americans enjoy a fair chance at becoming homeowners.

In the years since the Great Recession, homeownership rates have dipped to historic lows. Many Americans are not confident they will ever own a home, a tragic consequence of a decade of weak economic growth, excessive regulations, and stagnant wages. Many young families are unable to achieve the independence they desire because they have difficulty saving for a down payment, overcoming regulatory burdens, or gaining access to adequate credit. These challenges are even more pronounced for minorities, whose homeownership rates remain substantially below those of their fellow Americans.

I am committed to helping hard-working Americans become homeowners. As part of my Administration's plan to strengthen the middle class and the American housing market, I am working with the Congress on a pro-growth agenda of reducing rules and regulations, cutting taxes, and eliminating unnecessary government spending. These policies will unshackle our economy and create and sustain high-paying jobs so that more Americans have the resources and freedom they deserve to fulfill their American Dream.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2017 as National Homeownership Month.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–11778
Filed 6–2–17; 11:15 am]
Billing code 3295–F7–P

# Presidential Documents

**Proclamation 9622 of May 31, 2017**

## National Ocean Month, 2017

**By the President of the United States of America**

**A Proclamation**

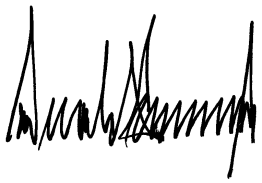
National Ocean Month celebrates the mighty oceans and their extraordinary resources. This month, we recognize the importance of harnessing the seas for our national security and prosperity.

Thirty-four years ago, President Ronald Reagan proclaimed the creation of the U.S. Exclusive Economic Zone, making clear America's sovereign right to explore, exploit, conserve, and manage ocean resources extending 200 nautical miles from our shores. This is the world's largest Exclusive Economic Zone, spanning more than 3.4 million square nautical miles—an area larger than the combined landmass of all 50 States. We must recognize the importance of our offshore areas to our security and economic independence, all while protecting the marine environment for present and future generations.

Today, our offshore areas remain underutilized and often unexplored. We have yet to fully leverage new technologies and unleash the forces of economic innovation to more fully develop and explore our ocean economy. In the field of energy, we have just begun to tap the potential of our oceans' oil and gas, wind, wave, and tidal resources to power the Nation. The fisheries resources of the United States are among the most valuable in the world. Growing global demand for seafood presents tremendous opportunities for expansion of our seafood exports, which can reduce our more than $13 billion seafood trade deficit.

NOW, THEREFORE, I, DONALD J. TRUMP, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 2017 as National Ocean Month. This month, I call upon Americans to reflect on the value and importance of the oceans not only to our security and economy, but also as a source of recreation, enjoyment, and relaxation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of May, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-first.



[FR Doc. 2017–11779
Filed 6–2–17; 11:15 am]
Billing code 3295–F7–P

# Reader Aids

**Federal Register**

Vol. 82, No. 106

Monday, June 5, 2017

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| | |
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| **Federal Register/Code of Federal Regulations** | |
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| **The United States Government Manual** | **741–6000** |
| **Other Services** | |
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| Privacy Act Compilation | **741–6050** |
| Public Laws Update Service (numbers, dates, etc.) | **741–6043** |

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## FEDERAL REGISTER PAGES AND DATE, JUNE

25203–25502 ..... 1
25503–25714 ..... 2
25715–25930 ..... 5

## CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
9618 ..... 25921
9619 ..... 25923
9620 ..... 25925
9621 ..... 25927
9622 ..... 25929

**5 CFR**

1201 ..... 25715

**12 CFR**

1263 ..... 25716

**Proposed Rules:**
229 ..... 25539

**13 CFR**

121 ..... 25503
134 ..... 25503

**14 CFR**

23 ..... 25509
39 ..... 25723

**Proposed Rules:**
39 ..... 25542, 25545, 25547, 25550, 25552, 25554, 25556, 25742, 25744, 25746, 25748
71 ..... 25559, 25561, 25563

**21 CFR**

**Proposed Rules:**
1308 ..... 25564

**23 CFR**

490 ..... 25726

**28 CFR**

**Proposed Rules:**
16 ..... 25751

**33 CFR**

100 ..... 25511
117 ..... 25726, 25727
165 ..... 25515, 25517, 25519, 25521, 25728

**Proposed Rules:**
110 ..... 25207

**40 CFR**

52 ..... 25203, 25523
60 ..... 25730
62 ..... 25734
81 ..... 25523
171 ..... 25529
180 ..... 25532
258 ..... 25532

**Proposed Rules:**
52 ..... 25208, 25211, 25213
62 ..... 25753
158 ..... 25567
258 ..... 25568

**44 CFR**

64 ..... 25739

**46 CFR**

**Proposed Rules:**
515 ..... 25221
520 ..... 25221
525 ..... 25221
530 ..... 25221
531 ..... 25221
532 ..... 25221
535 ..... 25221
540 ..... 25221
565 ..... 25221

**47 CFR**

0 ..... 25660
1 ..... 25660
25 ..... 25205
36 ..... 25535
61 ..... 25660
63 ..... 25660
69 ..... 25660

**Proposed Rules:**
8 ..... 25568
20 ..... 25568
73 ..... 25590

**49 CFR**

7 ..... 25740

**Proposed Rules:**
387 ..... 25753

**50 CFR**

622 ..... 25205

## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

**Last List May 19, 2017**

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